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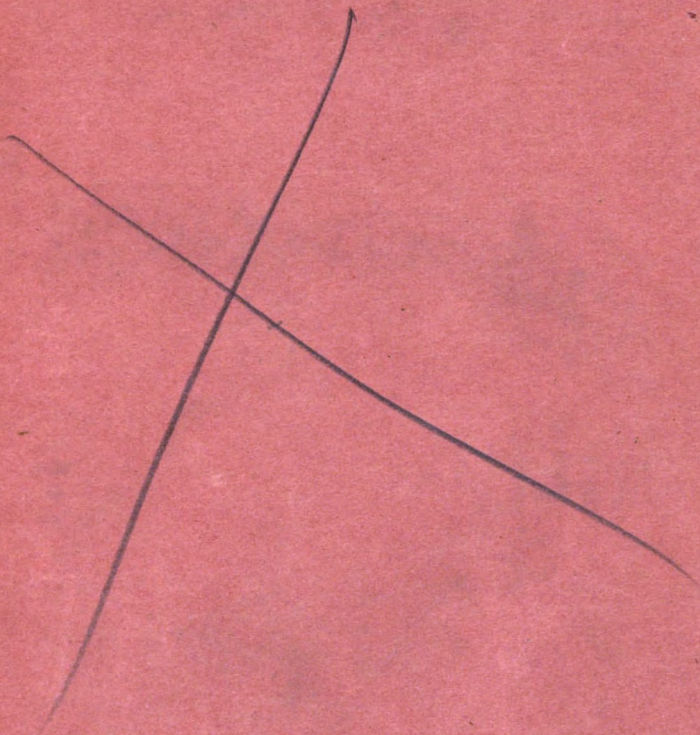
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FOR BOOKS RELATING TO  
POLITICS AND FINE ARTS













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The Great "Ku Klux Trials."

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OFFICIAL REPORT

OF THE

PROCEEDINGS BEFORE U. S. CIRCUIT COURT,

Hon. HUGH L. BOND, Circuit Judge, Presiding,

AND

Hon. GEORGE S. BRYAN, District Judge, Associate,

HELD AT

COLUMBIA, S. C.

NOVEMBER TERM, 1871.

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REPORTED FOR THE COLUMBIA UNION, BY BENN PITTMAN AND L. F. POST, STENOGRAPHERS.

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COLUMBIA. S. C.:

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*January, 1872.*



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# FIRST DAY'S PROCEEDINGS,

## Columbia, S. C., November 28, 1871.

Yesterday morning, at an early hour, people in considerable numbers commenced flocking into the city, brought hither by the approaching Ku Klux trials.

The Court met at 11 o'clock, A. M., United States Circuit Judge Hon. H. L. Bond, of Maryland, and Hon. Geo. S. Bryan, District Judge of South Carolina, presiding.

The list of grand and petit jurors were called by the Clerk, Daniel Horibeck, Esq., and the following grand jurors answered to their names: Adam Branch Landsford, white, R. E. Deverney, colored, Charleston; Augustus Harris, colored, Edgefield; W. Wingate, colored, Cheraw; H. S. Grigge, white, Charleston—discharged, having served; W. B. Mitchell, colored, J. B. Williams, colored, Charleston; Thomas T. Thackam, white, Columbia; James Murrill, colored, Georgetown; Richard Blackney, white, Oro; James D. Graham, white, Sumter; F. M. Johnstone, white, Charleston.

The following petit jurors answered to their names: Philip Salters and J. C. Holloway, both colored, Charleston; J. F. Riky, white, St. Mathews; John Freeman, colored, Charleston; Aaron Jackson, white, Cheraw; Alfred Agerton, white, Chesterfield; Emanuel Johnson, James Magill and E. C. Rainey, all colored, Georgetown; Alex. Albrook, colored, Chesterfield; J. B. Witherspoon, white, Sumter; John Gordon, colored, Charleston; Adam Cook, Winnsboro; William Mooney, white, Columbia; D. Lynch Pringle, white, Georgetown; Andrew W. Burnett, white, Charleston; W. H. Deberry, white, Lynchburg; Joseph Keene, colored, Statesburg; Henry Nordham, colored, Charleston; Andrew W. Curtis, colored, Chesterfield; James M. Johnstone, colored, Charleston.

These jurors who had served in the Circuit Court, within the past two years, were discharged.

On motion of District Attorney D. T. Corbin, Solomon L. Hoge, Esq., was admitted as associate counsel, it appearing of record that he had been admitted to practice in all the courts of this State.

District Attorney Corbin rose to object to the manner in which the jury had been drawn, and challenged the entire array as being contrary to the law in such case, and read the order for the drawing of jurors.

The following are the grounds of the challenge submitted by the District Attorney:

"United States, South Carolina District, Fourth Circuit, November Term, A. D., 1871: The United States, by D. T. Corbin, District Attorney, comes and challenges the array of grand and petit jurors drawn and summoned to serve at the present term of the Court, for causes following, to wit:

"1. That said jurors were not designated and drawn in the manner provided by law.

"2. That said jurors were drawn from the jury box by a small child, and not by the Clerk or Marshal as required by law.

"3. That said jurors were not drawn in the presence of the Clerk and Marshal, but were drawn in the presence of the Clerk only."

Affidavits were then submitted supporting the grounds of challenge of the array.

The affidavit of United States Marshal L. E. Johnson asserted that he was in the city of Charleston on the second day of August last, and in going to his office on that day he was informed that the grand and petit jurors for the next stated term of the Circuit Court had been just drawn, which greatly surprised him, as he had received no notice from the Clerk, Daniel Horibeck, Esq., or any other person, of the intended drawing of the jurors that day by the Clerk, and consequently was not present during any part of the time of the drawing of said jurors, as the law requires.

The affidavit of General Deputy Marshal Edw. P. Butts, shows that on the second day of August, while he was in his office in Charleston, he was notified by the Clerk of the Court that he was about to draw the jurors for the next term of the Court to be held in Columbia, and that he went into the room where Daniel Horibeck, Esq., the Clerk of the Court, had the jury box, which he, Horibeck, unlocked and opened in his presence, and a small boy being called in was instructed by the Clerk to draw from the jury box the ballots, and that the boy commenced drawing the ballots; that he, Butts, was called away after he had drawn a few, and left Mr. J. H. Shriner, a bailiff of the Court, to take his place. Deputy Butts deposes that the Marshal was not present during the time of the drawing.

John H. Shriner deposes that he was a bailiff of the Court at the time named, and was present, as asserted in the foregoing affidavits; that his Honor Judge Bryan and the Clerk, Daniel Horlbeck, were present, and Deputy Marshal Butts was present a part of the time, and that the jury box was brought into the court room and opened in the presence of all the parties, a small colored boy being employed to draw the ballots. The remainder of Mr. Shriner's affidavit corroborates those given above as to the absence of Marshal Johnson.

The District Attorney supported his grounds that the jury had not been drawn in accordance with law governing the same, as follows:

He said that he did not attempt to impute, either to the Clerk or any other person, any designed evasion or non-compliance with the law. He supposed that the fact that the jury was drawn by a small child was attributable to an old custom sanctioned previously by this State, but long since abolished. That custom, however, had been continued by the Clerk of this Court, he having been for a long time Clerk of the State Court while the custom obtained there. He added, that the order required the drawing to be done by the Clerk or Marshal, and nobody else; and in the presence of both the Clerk and Marshal. The Deputy was not mentioned in the order; and where a special trust has been confided to draw a jury, counsel presumed there could be no question that the trust must be discharged personally. He added that he was prepared to submit authorities if the Court desired them.

The Hon. Reverdy Johnson, in opposition to the challenge by the District Attorney, said that he had asked Mr. Corbin what he designed to accomplish if he succeeded in getting the array dismissed, but had received no answer, except that the object was to get another jury. Mr. Johnson understood by a portion of the order of the Court, that the jury had to be selected from every part of the State, and not from the vicinage, and, therefore if this jury was discharged, these trials must be postponed and the whole proceeding of drawing a jury gone over again.

As he resumed his seat, Mr. Johnson said, speaking for himself, that if the counsel for the Government entertained any fears that the judgments in these cases, passed on the verdicts of this jury, might be set aside for irregularity in drawing, he would waive all objections to the manner in which the jury was drawn.

Mr. Corbin's reply, stated that he had made this motion in view of a very important decision made in the State of Maryland, in the case of *Clair vs. the State*, in which an irregularity in drawing the jury was taken advantage of, either during or after the trial. The question went to the Supreme Court; the *venire* was set aside, and a new trial was ordered on account of this irregularity—i. e., that no two of the judges met together and made up the panel of jurors for the city of Baltimore, as required by the act.

The District Attorney, after referring to the particulars and quoting from the case above mentioned, said further, that these same questions arose in the *Surratt* case, and went on to state where the two cases were analogous, and that in both cases decisions had been rendered that the juries had been illegally drawn, and consequently by passing over these objections much inconvenience had afterwards arisen on account of the trials being set aside and new juries being ordered after the cases had been carried up.

The District Attorney doubted very much whether it was in the power of the defense, if this jury should be held irregular, to say, "We waive every objection of this kind." That every person has the right to demand trial by a lawful jury, and each prisoner must personally waive the irregularity in such cases.

Mr. Johnson replied to the effect that in the *Clair* case cited by the District Attorney, the decision was based upon an act which differed very materially from the order of Court under which this question arises. The difference, in substance, being that in the former case a judicial duty was required of the Judges, while under this order the duty required of the Marshal and Clerk is merely ministerial and can be performed by his Deputy.

In reply to the remarks of the District Attorney relative to the right of counsel to waive objections affecting final judgment, Mr. Johnson said that parties have a right to be tried by twelve men, and cannot be forced to trial without twelve men. If tried by eleven men, against their protest, the judgment is annulled; but they, or their counsel may waive that right—there is no right which they may not waive, unless there be some constitutional prohibition. He was at a loss to conceive how the counsel for the Government could possibly imagine that these prisoners would be able to object to the trial, if tried by this jury, upon the ground that the jury was not properly drawn, if, before trial, their counsel, with their consent, agreed to waive the objection and stand the hazard of the die.

His Honor Judge Bond asked if the Court understood Mr. Johnson to say that it is out of their power, if this *venire* is set aside, to summon a jury *de circumstantibus*.

Mr. Johnson replied that he was far from saying anything of the kind. He took it for granted that there would be no jury summoned from the vicinage, as such a proceeding would be in direct violation of the jury order; but, he continued, he understood the District Attorney as saying there would be no delay; that another jury could be drawn. Mr. Johnson supposed the District Attorney meant from the box.

Mr. Corbin said, his meaning was that they should be summoned by the Marshal.

By direction of the Court section 8 of the jury law was then read.

After the reading of this Mr. Johnson said, if the objection of the District Attorney is valid, we are without a jury, and if there is no jury, the only way in which a jury can be obtained is by summoning them according to the provisions of the order.

The District Attorney was at a loss to understand the position taken by his distinguished opponent in reference to his challenge to the array. The words of the Statute are "when by reason of challenge or otherwise," the panel shall be exhausted, &c.; now, a challenge to the array is one of the recognized modes of getting rid of a jury; you simply do in the aggregate what an individual challenge does to an individual juror, and the result is the same.

In support of this challenge Mr. Corbin referred to 1 *Surratt's Trials*, p. 55.

Mr. Johnson said the objection in the *Surratt* trial was made on the ground that the drawing had been done in secret; but such was not the case here.

After some further discussion between counsel concerning minor points the Court announced that as the panel of grand jurors was not complete they would adjourn the Court until 11 o'clock, Tuesday, and hold the matter under consideration.

## SECOND DAY'S PROCEEDINGS, NOVEMBER 29.

The Court met pursuant to adjournment. United States Circuit Judge Bond and District Judge Bryan present; Judge Bond presiding.

Eight Grand Jurors and twenty-two Petit Jurors answered to their names.

Mr. Corbin presented a commission from the Department of Justice, associating Attorney General D. H. Chamberlain, as counsel for the prosecution, and Mr Chamberlain took the oath.

Mr Corbin, the District Attorney, presented an order withdrawing his challenge to the array made Monday, and one for taking jurors from the body of the District.

Mr. Johnson, representing the defendants generally, and in opposition to the order presented by Mr. Corbin, said:

The District Attorney proposes that there shall be a venire to summon thirteen grand jurors, or so many as may be necessary to fill up the panel. I rise merely for the purpose of saying, that by the act of Congress, I think of 1824, but I am not sure that I am correct as to the date of the act, the State of South Carolina is divided into two districts, one called the Eastern and one called the Western, and the offenses which are alleged to have been committed were all, I understand, committed in some of the counties within the Western District. The sixth article of the amendments to the constitution, expressly provides, for the security of the citizen who may be indicted, that the jury which is to try him shall be summoned from the district where the offense was alleged to have been committed. I cannot be mistaken as to the purport of that amendment.

If, therefore, the act of 1824 has not been repealed—I mean the act of Congress—and there has been no change at all in that respect, in any legal way, then we feel that if the jury which is now to be summoned is taken from the Eastern District, it would be an error which I would not beat liberty to waive—could not waive, because the Constitution secures to a party the right to be tried—to be presented by a grand jury taken from the vicinage of the district where the offense was committed, and to be tried by a petit jury selected from the same locality.

The order which was passed by the Chief Justice and Associate Justice—before your honors yesterday—evidently seems to contemplate but one district in the State; but if, in fact, the division of the State into districts can only be done by the legislative department of the Government, and if that department of the Government has divided South Carolina into two districts, then it was not within the power of the Court, by any order of its own, to change the act of Congress in that particular, and consequently, not in the power of the Court to deprive the accused of the right to have a jury selected from the locality where the offense is alleged to have been committed.

I mention this now merely for the purpose of bringing it to the attention of the Court, that, so far as I am concerned, we are satisfied with any judgment which the Court may pronounce; but, at the same time, think—if the Court should be of the opinion that the jury should be selected from the Eastern District—it would be my duty, should I represent the parties in the Supreme Court of the

United States, to make that a ground of objection should the judgment be adverse to my clients.

District Attorney Corbin replied:

If the Court please, the State of South Carolina is divided into two districts for the purpose of the District Court. Those Districts are called Eastern and Western. The Western District consists of the counties of Lancaster, Chester, York, Union, Spartanburg, Greenville, Pendleton (since divided by the Legislature,) Abbeville, Edgefield, Newberry, Laurens and Fairfield. The remainder of the State constitutes the Eastern District.

For the purposes of the Circuit Court the State of South Carolina *in toto* constitutes a district, and these parties being on trial in the Circuit Court, it seems to me that the true and proper construction is that the jury should be drawn from the body of the District, which is the State.

The constitutional point made is undoubtedly true, but what constitutes the district? That is the only question. In 1, Brightly's Digest, p. 844, we find, "The Sixth Circuit Court of the United States, for the District of South Carolina (since changed to the Fourth,) which is required by law to be holden on the second Monday in December, annually, shall hereafter be holden on the fourth Monday in November, annually."

That is, the time of holding the Court originally in this State has been changed to the present fourth Monday in November. The Court will notice that the State is spoken of as the District of South Carolina, and this Court is holden for that District.

Now, in reference to the order which I presented to the Court, by an act of the 3d of March, 1865, 2 Brightly, p. 107, it is provided that "Every grand jury empanelled before any District or Circuit Court of the United States to inquire into any presentment made of public offenses against the United States, committed or tryable within the District for which the Circuit is holden, shall consist of not less than sixteen, and not exceeding twenty-three persons. If, of the persons summoned, less than sixteen attend, they shall be placed on the Grand Jury, and the Court shall order the Marshal to summon, either immediately, or for a day fixed, from the body of the District," that is the District for which the Court is holden. If the District Court, from that district; and if the Circuit Court, from the district in which the Circuit Court is holden. "And whenever a challenge to an individual grand juror is allowed and there are not other jurors in attendance sufficient to complete the grand jury, the Court shall make a like order to the Marshal to summon a sufficient number of persons for that purpose. No indictment shall be found, nor shall any presentment be made without the concurrence of at least twelve grand jurors."

I think, may it please the Court, there can be no mistake about this matter. The position of the gentleman would be entirely correct if we were in the District Court, but when we come to a Court that comprehends the whole State in its jurisdiction, then the juries should be drawn from that district.

Mr. Johnson said:

May it please your Honors, the constitutional provision was evidently intended for the security of the citizen—not for the benefit of the Government. Or, rather, it is especially intended for the security of the one, and has no reference to the security of the other. The common law rule, which, as your Honors know, is supposed to be very materially for the security of the subject, required the jury to be taken from the vicinage where the offense was perpetrated. The provision is to be construed liberally; nothing is more true than this



principle. Now the learned counsel alleged, that if a criminal cause was instituted in a District Court, and not in the Circuit Court of the United States, the jury would only be summoned from that district; but, he maintains, that inasmuch as the jurisdiction of the Circuit Court extends over the whole State, there is no necessity at all for enforcing the provision of the Constitution—or, rather, for applying the provision of the Constitution to a case in that condition. It seems to me that the learned gentlemen is incorrect.

It is true that the Circuit Court has jurisdiction, as a Court, over the entire district of South Carolina; but when we come to inquire how the jury is to be collected, we must then look to the act which makes two districts in the State of South Carolina and apply the constitutional provision, that the jury shall be selected from that District in which the offense was committed. I submit, however, that, I am perfectly willing, so far as I am individually concerned, to abide by any ruling, only repeating that if the ruling should be adverse, I would deem it my duty to make an objection in the Supreme Court of the United States, should I represent any of these cases there.

*Judge Bond.*—Mr. Corbin have you the act of Congress that establishes the Fourth Judicial Circuit?

*Mr. Corbin.*—The act of 1862, if the Court please, establishes the Circuit: "Hereafter the District of Maryland, Delaware, Virginia and North Carolina, shall constitute the Fourth Circuit; the Districts of South Carolina, Georgia, Alabama, Mississippi and Florida, shall constitute the Fifth Circuit." If the Court please, in an act still later, which puts South Carolina in the Fourth Circuit, it is spoken of as the District of South Carolina.

The Court will allow me to make one suggestion: If the construction of the distinguished counsel on the other side is correct, we shall be put in this very anomalous condition, that if we are to look to the districts constituted for the purpose of the District Courts, when we get a man from the Western District to try we must get a grand jury from that District to present a bill; when we get a prisoner from the Eastern District we must get a grand jury into this Court from that District. Now how, if the Court please, are we ever to get along with this business if that construction is to prevail? Is it to be presumed that the business is to be utterly blocked by such a construction? And if we look into the Constitution, there is nothing said in the section referred to in the amendment as to what a district shall be; it simply says this: "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and District wherein the crime shall have been committed"—the State and District. Now if the State constitutes a District of itself, then State and District are synonymous,—"which District shall have been previously ascertained by law." The State of South Carolina has been fixed by law as a District for the purposes of a Circuit Court, to be held at Columbia and at Charleston.

At the conclusion of the argument, Judge Bond announced as the opinion of the Court, that, so far as the Circuit Court is concerned, there is but one district in South Carolina. This was the Circuit Court for the District of South Carolina, and the Marshal was entitled to summon a jury from the body of the district.

Mr. Johnson reserved the point made in his argument.

Judge Bond then asked the Marshal how much time was necessary to summon the jurors, who replied that 48 hours would be required.

The Court then adjourned until Friday, at 11 A.M.

### THIRD DAY'S PROCEEDINGS—DECEMBER 1.

The Court convened at 11 o'clock, A. M., United States Circuit Judge Bond presiding, District Judge George S. Bryan Associate Justice.

The grand and petit jury, including those summoned since adjournment, were called. Several made application to be excused; among them E. M. Stoeber, on the ground that he was clerk of the Joint Special Legislative Committee of South Carolina. He was not excused.

The Court appointed Mr. B.F. Jackson as foreman of the grand jury. The foreman and the jury were then sworn.

Mr. Stoeber addressed the Court, stating his mind was prejudiced, and he objected to serving on conscientious scruples. The Court excused him, after some few remarks from counsel, stating that as he was the same gentleman who made application to be excused on the ground that he was a clerk of the Special Committee, he would be excused, considering that had much more to do with the matter than any prejudices he might entertain, as thus far no case had been presented. The Marshal was directed not to summon him any more.

Judge Bond then said:

*"Gentlemen of the Jury:* The act of Congress of April 20, 1871, in the 54th section, requires that every juror shall, before entering upon any such inquiry—investigating cases arising under this act—before entering upon any such inquiry, hearing, or trial, take and subscribe on oath, in open court, that he has never directly or indirectly counselled, advised, or voluntarily aided any such combination or conspiracy; and each and every person who shall take this oath and shall therein swear falsely, shall be guilty of perjury, and shall be subject to the pains and penalties declared against that crime.

"The conspiracy to which that section refers is in the 2d section of the act.

"That if two or more persons within any State or Territory of the United States, shall conspire together to overthrow, or to put down, or to destroy by force the Government of the United States, or to levy war against the United States, or to oppose by force the authority of the Government of the United States, or by force, intimidation, or threat to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take or possess any property of the United States contrary to the authority thereof, or by force, intimidation or threat, to prevent any person from accepting or holding any office, or trust, or place of confidence, under the United States, or from discharging the duties thereof, or by force, intimidation, or threat, to induce any officer of the United States to leave any State, district, or place where his duties as such officer might lawfully be performed, or to injure him in his person or property, on account of his lawful discharge of the duties of his office, or to injure his person while engaged in the lawful discharge of his duties, or to injure his property so as to molest, hinder, or impede him in the official discharge of his duty, or by force, intimidation, or threat, to deter any party or witness in any court of the United States from attending

such court, fully, freely and truthfully, or to injure any such party or witness in his personal property on account of his having to testify, or by force, intimidation or threat, to influence the verdict, or presentment, or indictment, of any juror or grand juror, in any court of the United States, or to injure such juror, in his person or property, on account of his being, or having been such juror, or shall conspire together, or go in disguise upon any public highway, or upon the premises of another for the purpose, either directly or indirectly, of depriving any person or any class of persons of the equal protection of the laws, or of equal privileges or immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State from giving or securing to all persons within such State, the protection of the laws, or shall conspire together for the purpose of, in any manner impeding, hindering, obstructing, or defeating the course of justice, in any State or Territory, with intent to deny to any citizen of the United States, the due and equal protection of the laws, or to injure any person in his person or his property for lawfully enforcing the right of any person or class of persons to the equal protection of the laws, or by force, intimidation or threat, to prevent any citizen of the United States lawfully entitled to vote from giving his support or advocacy in a lawful manner towards or in favor of the election of any lawfully qualified person as an elector of President or Vice-President of the United States, or as a member of the Congress of the United States, or to injure any such citizen in his person or property on account of such support or advocacy, each and every person so offending shall be deemed guilty of a high crime.

"That is the conspiracy which the oath, which will now be put to you, means, that you have never engaged in, advised or counselled. Let them be sworn."

The grand jurors then took and subscribed the following oath :

"We, the undersigned, do solemnly swear that we have never directly or indirectly counselled, advised, or voluntarily aided any such combination or conspiracy as set forth and described in an act of Congress entitled 'An Act to Enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other purposes,' approved April 20, A. D., 1871."

The grand jury, as impanelled, is as follows—six of the twenty-one present being white, and the majority being about equally divided between black men and mulattoes :

Richard Blackney, William Wingate, Dug Harris, R. A. Deeverney, James B. Williams, F. M. Johnstone, Thomas J. Thackham, Adam Branch, W. B. Mitchell, Henry Jones, Sandy Tucker, B. F. Jackson, James C. Bonsall, James W. Heyward, James G. Graham, C. Barnum, Le Grand Singleton, Lewis Prior, Jacob Thompson, H. Chambion and Frank J. Lawrence.

There were but five of the above who were not able to write their names.

#### CHARGE TO THE GRAND JURY.

Judge Bond then charged the grand jury as follows :

"*Gentlemen of the Grand Jury* : Your duty has been sufficiently intimated to you by the words of the oath you have just taken. The Court will

say to you that in the investigation of the cases that will be brought before you, it is necessary you should exercise great patience. Many of the witnesses are laboring under a great deal of unusual excitement; many of them are ignorant people not accustomed to appearing in courts, and it is absolutely necessary that you should bear with them patiently.

"You yourselves are not to admit the excitement outside to have any entrance into the grand jury room. You are to find your presentments upon the testimony of the witnesses that come before you, and not upon outside statements. You will exercise your own best judgment, and assume the great responsibility the law casts upon you, and do your duty with impartiality and fairness, but with firmness.

"You may now retire into your room and examine such witnesses as the United States may send before you."

The panel of petit jurors was then called, and the oath previously administered to the grand jury was administered to and signed by them.

The following is the panel, as they were sworn and signed :

Philip Salters, James C. Holloway, J. F. Riley, John Freeman, Adam Jackson, Alfred Agerton, E. Johnson, James M. Johnson, James C. Magill, E. C. Rainey, Alexander Allsbrook, J. B. Witherspoon, John Gordon, Adam Cook, William Mooney, D. Lynch Pringle (absent—excused till Monday), Andrew W. Burnett, W. H. DeBerry, Jos. Keene, Henry Fordham, Andrew W. Curtis, John Nott, C. H. Bankhead, John T. Wilson, Henry Daniel, Gabriel Cooper, N. E. Edwards, F. T. McMaken, Isaac Black, January Simpson, Peter B. Glass, Edward Reid, W. Smith, Joseph Smith, C. Smith, John Lee, W. H. Jackson, Charles Misort, Addison Richardson, John Pugh, John Dunn, J. Felder Meyers, John Gilmore, W. David Leabeey, Cyrus Allston, H. W. Purvis, W. H. Dover, John Wellburn.

No cases having been reported by the grand jury, the petit jury was discharged until to-morrow, and the court then gave attention to petitions and other business.

#### FOURTH DAY'S PROCEEDINGS—DECEMBER 2.

The Court met pursuant to adjournment, United States Circuit Judge H. L. Bond presiding, United States District Judge George S. Bryan Associate Justice.

William H. Reed, a grand juror, was sworn. The clerk called the roll of jurors.

The District Attorney submitted a motion that bench warrants be issued for Allen Crosby, Sherod Childers, *alias* Bank Childers, Banks Kell, Evans Murphy, Ibezekiah Porter, Sylvanus Hemphill and William Montgomery, against whom true bills were returned by the grand jury on Friday.

The District Attorney stated that the Government was ready to proceed to trial.

The counsel for the defense asked for further time, on the ground that they had not been furnished with a copy of the indictments; whereupon the District Attorney said that he was opposed to

delay any length of time, giving as a reason, that the prisoners had, some time ago, all been furnished with an abstract of the charges against them, and that there was no law compelling him to furnish a copy of the indictment to prisoner's counsel, yet he was willing to give fair time, and no more. They should have been prepared for trial two weeks ago.

The defense stated that they had seen the original indictment, and desired copies of the same, according to custom. The request of counsel for defense, for time till Monday, to summon witnesses, &c., was granted. The petit juries were then discharged until that time.

Messrs. Clawson, Thompson & Clawson, attorneys, of York, petitioned the Court to allow John Graham and William Thomasson, now confined in jail in York county, to go before the Commissioner at that place for the purpose of being bailed for appearance for trial. Mr. Clawson stated that they were confined on minor charges—whipping a negro, &c., and that a number were in the jail at Yorkville, on similar small offenses, much to the inconvenience of their families.

The District Attorney opposed the motion, on the ground that all the cases in which it had been thought proper to grant bail, had, under his instructions, been heretofore inquired into, and the parties had been either bailed or paroled; that there were now about fifty in the jail at Yorkville, whose cases he did not consider with so much leniency. The Attorney thought it was an unprecedented request, especially to ask bail for Thomasson, whose case at that very moment was before the grand jury. He gave as a reason for keeping the prisoners at the York jail that they were more comfortable there, the jails here being filled, and they also being nearer their friends at that place. He thought if they were to be bailed they should be brought before the Court at this place that the bail might be examined, to avoid any straw ball being given.

The prisoners' counsel stated that many of them were unable to bear the expense of a trip here, whereupon it was remarked, if they were bailed at Yorkville they would come at their own expense, whereas if they are brought here by the Government it would be otherwise.

No decision was rendered by the Court, which remarked that measures would be taken into consideration regarding the whole number of prisoners now confined in the York county jail.

The grand jury found true bills, the charge being conspiracy, against James Williams, alias Jim Rainey, and murder, against James Rufus Bratton, Chambers Brown, Sylvanus Shearer, William Shearer, Hugh H. Shearer, James B. Shearer, Robert Riggins, Hugh Kell, Henry Warlock, Rob't Hayes Mitchell, Napoleon Miller, Alonzo Brown, William Johnson, James Neal, Addison Carroll, alias Ad. Carroll. Miles Carroll, Harvey Gunning, Pinckney Caldwell, Rufus McLean, Robert Caldwell, Bascom Kennedy, Holbrook Good, John Caldwell, Richard Bigham, Eli Ross Stewart, alias Alew Stewart, Samuel Ferguson, John J. Bratton, James William Avery, Josiah Martin, alias Joe Martin.

Conspiracy against James Williams, alias Jim Rainey, and murder.

The Court then adjourned till Monday 11 o'clock, A. M.

## FIFTH DAY'S PROCEEDINGS, DECEMBER 4.

The Court met in pursuance of adjournment, (United States Circuit Judge, H. L. Bond, presiding, United States District Judge, George S. Bryan, Associate Justice,) in the hall of the library in the State House.

There was a large attendance inside the bar, of the legal fraternity, and several Judges represented the judiciary, as spectators. The room back of the bar was filled and the galleries were crowded. The roll of jurors was called by the clerk, and Alva Gage, of Charleston, a talesman was sworn in. [Note.—In the account of Saturday's proceedings it was omitted to state that John Kershaw, of Camden, was admitted to practice in the Circuit Court, and took the oath prescribed. Also, that it was ordered that R. A. Rees, Dr. John S. Crosby, Wm. White, Sam Blair, Robert A. Black, and Alexander Smith, of York county, be brought to testify, the cost being borne by the United States. Also, bench warrants were issued for the prisoners indicted by the grand jury.] The Court then stated they were ready to proceed, and were ready to hear any preliminary motion.

The grand jury then retired to their room. When Mr. Stanberry for the defense, in the United States vs. Allen Crosby, et al., moved to quash the indictment and said:

ARGUMENT OF HON. HENRY STANBERRY.

*May it Please your Honors.*—We have filed a motion in behalf of certain of the defendants, that the indictment which was returned "true bill" to this Court, on the 1st of December, shall be quashed, and each and every count thereof, for reasons set forth in the bill. I furnished at the earliest practicable moment to my friend, the District Attorney a copy of our motion, and the reasons upon which it was grounded, so that he might have as early an opportunity as possible to make the preparations.

The indictment, if the Court please, contains not less than eleven counts. All of these counts, except two, charge a conspiracy, and those two counts—the eighth and ninth—charge the commission of an act without any allegation of a prior conspiracy. All the offenses charged under these eleven counts relate to suffrage and an interference with its exercise, except two—the eighth—which charges an interference with rights secured by the constitution to exemption from unreasonable searches and seizures of persons, papers and effects; and the other charges the offense to be an offense against the act of Congress securing to each citizen equal protection under the law.

I think this is about the scope of the various counts. I shall proceed in detail, if the Court please, to state our reason why this indictment, and each and every count thereof, cannot be sustained; and I may say in the beginning, if the Court please, that my friend and myself associated in this defense, intend to make no captious objections. We do not sit here merely to contend for delay and postponement, or to contend over merely formal matters, which whether amended or not would make no particular difference to our defense;

but to contend for matters which we deem essential to the defense and which it is not our privilege as counsel to waive in behalf of our clients.

Undoubtedly, at first blush, some of the objections which we shall state, may appear formal and capable of amendment; so they are, but it is the reason of that capacity of amendment, and that necessity of amendment, that uncertainty to advise us of the particular acts which we are called upon to defend against, that we are obliged to make those objections which may be remedied by another indictment; but we find we cannot proceed properly with counts so general in their allegations. Then, beyond that, if the court please, there are contained in this motion, and arise under it, questions of the gravest import.

To go on then, with the first count, meeting merely the formal parts of it: It charges these defendants, together with divers other evil disposed persons; all of York county, in the State of South Carolina, and in this district, at York county, in the said district and within the jurisdiction of this court, on the first day of February, 1871, unlawfully did conspire together with intent to violate the first section of the act, entitled "An Act to enforce the rights of citizens of the United States, to vote in the several States of this Union, and for other purposes," approved May 31st, 1870, by unlawfully hindering, preventing, and restraining divers male citizens of the United States, of African descent, above the age of 21 years, qualified to vote at any election by the people, from exercising the right and privilege of voting, and by other unlawful means not allowing them to vote at an election by the people, to be held on the 3d Wednesday of October, 1872, within the county, district and State aforesaid, contrary to the act of Congress, in such case made and provided, against the peace and dignity of the United States.

First of all, this count refers to a particular section of a particular law, as that embraced within this conspiracy, and which it was by this conspiracy to violate, which is to violate that first section of the enforcement act of 1870. If the court please, it is that first section; we must find the *corpus delicti* there; the thing prohibited there; it is an infraction of that section we are now called upon to answer. Let me read it: "An Act to enforce the right of citizens of the United States to vote in the several States of this Union, and for other purposes, passed"—directly set forth in the indictment—"passed and approved, May 31, 1870." This, then, is the section we are charged with violating: "Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That all citizens of the United States, who are or shall be otherwise qualified by law to vote at any election by the people, in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial sub-division, shall be entitled and allowed to vote at all such elections without distinction of race, color, or previous condition of servitude, any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority to the contrary notwithstanding."

Your honors are perhaps listening to find, where is the penalty for violating that section? Where is the prohibition in that section? What does that section do? Simply declares a right, not punishment for its violation. It would seem, if the Court please, that that is not enough. Where gentlemen undertake to locate a particular section, of a particular law which we are called upon for alleged infraction of, they must be very careful to steer very straight. It was unnecessary to do this,

but having done it, and referred us to it as the section which we are charged with violating, they must be careful to bring the offense strictly within it. The first objection then to this count is that the section to which they refer, and which they claim we conspired to violate, declares no penalty; it merely confers a right, but does not guard it with any penalty, or make it a crime to violate it; but we have other objections which apply not only to this section, but to others subsequent to it. And the first objection is that the names of the persons whose suffrage was interfered with or intended to be interfered with by this conspiracy, are not set out; nor is it alleged that the grand jury did not know their names, and were ignorant of them; there is no excuse given. This perhaps is one of the most material things in this indictment. It is not for being conspirators against all the world; it is for conspiring to violate the rights of certain individuals. What individuals? That is the first question. Who are we informed are the persons whose rights we have invaded? Not a name given, nor any excuse for not giving a name. Is it possible that it is necessary to argue that point? Would it be good to say we conspired to murder a man without giving his name or without saying the name of the person was unknown to the jury? If the grand jury do not know the names of the persons, and, from necessity, could not name them, they would be excused, from that necessity, but for no other reason. It is not necessary to refer to elementary books to sustain that point.

What next? The specific election at which they were not allowed to vote is not stated, nor does it appear whether it was an election for representatives to the Congress of the United States or for an elector of President or Vice President of the United States, or for a State officer, Governor or any officer elected under the constitution of the State. We are not told what was the character of this election, or when it was held, or what it was for; we are entirely abroad as to that. No notice of what election was to be held, or for whom they were to be prevented from voting. Now, if the court please, the charge is that they conspired to violate that first section by unlawfully hindering, preventing and restraining divers male citizens of the United States, of African descent, about the age of 21 years, qualified to vote at any election by the people in said county, district and State, from exercising the right and privilege of voting, and by other unlawful means not allowing them, the said male citizens, to vote at an election by the people, to be held on the third Wednesday of October, A. D. 1872. Now, if the Court please, we also object to this date 1872. What does the gentleman mean by a date like that? Of course a date stated in an indictment generally is not material, but it may become very material. Suppose you state as a day upon which a crime is committed, the 31st day of June. There is no such day in the calendar; it is therefore an impossible date, and the indictment is bad. Suppose you state in your indictment a day which is after the indictment is found; that is a material averment, and that makes the indictment bad. Or suppose as here, a future day which has never yet happened; as a matter of course, that would make the indictment bad. I really suppose the gentlemen made a mistake. Did you mean 1872, gentlemen?

[Mr. Corbin, the District Attorney. Exactly.]

If you did not mean it, we will allow you to amend it. As to the omission of the names, and the omission of stating the means resorted to, any further than this, that by unlawful means, threats, and intimidation, without stating their



character or anything of the kind, and without stating what election, whether for State, county or municipal purposes, in all these particulars, the question arises whether it is necessary, in an indictment for conspiracy—for such an offense as this—to set them out definitely.

Now, if the court please, in the first place, what is the nature of the offense? A conspiracy against what? Against the exercise of the right to vote, that is the offense. The character of the offense—it is not against any right which a man is in the exercise of all the time, as the right to enjoy his liberty, and to the protection of his person and property. It is not a right to vote all the time, but a right to vote at an election; the right can never be exercised except in voting at an election. It, therefore, cannot be infringed or impaired, except by preventing the exercise of that right at an election.

It is not charged here (and if it were, it would be ridiculous to say) that these defendants combined to deprive him of the right to vote generally; that they cannot do. It is impossible, for even the parties cannot divest themselves of that right by not voting for years. The right remains to vote when they choose at the proper election, and they can only divest themselves of that right by removal, &c. But the right to take away his vote, to rob him of his vote, does not reside in any combination; that can only be done in the mode pointed out by law—as, for instance, upon conviction for an infamous offense—so that the infraction of this right, in point of law, cannot be a deprivation of the right so as to take from the party his right. It is not property or a chattel that can be taken and transported to another place out of the reach of the owner. It is a personal right, intangible, that resides with himself, and which cannot be taken away, except in the legal mode. Therefore, a conspiracy to deprive a man of the right to vote, as a right, is a thing impossible, and the court would be at a disadvantage to sit and hear a cause which involved such a wrong principle of law as that a party being an African and entitled to vote his right to vote was divested by conspiracy. This power to vote is another thing; but I am now speaking of the right. It is a right, then, if the court please, that can only be interfered with in its exercise; it cannot, as I have said, be taken away, but it may be interrupted in its exercise, interfered with in its exercise, or he may be prevented from exercising it. Who, when, under what circumstances? The only time at which he can exercise the right of suffrage is at some election at which he is qualified to vote. Now, that being so, what must an indictment state? That this conspiracy to prevent a man from voting would interfere with the free exercise of his right to vote; why as a matter of course it must charge that it had reference to an election; to an intended exercise of that right to vote; to an opportunity to give that vote. Therefore the election must be stated, and it must appear to be such an one as is contemplated by law; that is, an election for public officers, not an election for bank directors or anything of that kind, but an election for political officers. It further must appear what sort of an election it is, whether for representatives in Congress—and therefore a Federal election—or whether it is an election for some office of the State—a State election. But we know nothing of this by this indictment. All omitted. Entirely at large, what election they mean, or what officers were to be elected; whether it was to be a special or general election, we are left entirely in the dark by the allegations in this count.

And this failure, if the Court please, to notify us of what election it is, gives rise to another very serious question. If they had alleged that it was an election for State officers, we should have another thing to say, and that is this, that a law of Congress which attempts to regulate the election of State officers, is void and unconstitutional; that any interference with the domestic concerns of a State, the constitution throughout forbids. Whereas, if it was stated to be an election for Federal officers, that objection would not lie.

Again, if the Court please, it is no where alleged that ~~he was qualified at this election~~ whatever it was, any further than it is stated that he "was"—what? "that they were male citizens of the United States above the age of 21 years" Those two things are qualifications. "Qualified to vote at an election by the people of said county." Qualified to vote how? Qualified to vote where? Qualified to vote it says "at any election by the people of said county, district and State, from exercising the right and privilege to vote." Qualified to vote, is that enough? Is the stating of that legal conclusion enough? How do we know that the grand jury understood what was necessary to qualify a man? What is their presentment? They say these parties were qualified to vote, and they go on to state two qualifications, but they are not enough. They go on by saying that they were male persons. That is all very well. Females are not allowed to vote by Federal or by your State law. Then they further proceed to say that they were citizens of the United States. That is all very well; that is another qualification, but not all. Then they proceed, further, to state that they were of the age of 21 years and upwards: still another special qualification. Now, the grand jury are on the road to state the qualification, and to show the court, net by a legal conclusion, but by facts, that they were qualified to vote; but they stop short. Every qualification is necessary; they give us three—the sex of the party, the age of the party, the citizenship of the party. But what next? They fail to show us the residence—a material and necessary thing to go into the qualifications to vote at any election.

And now, if the court please, I understand as to the qualifications of voters, that it was formerly two years residence in the State; that your qualifications, under the present Constitution, to vote at any election, are a residence of one year in the State, and sixty days at least, in the place, precinct, or whatever it is, where the poll is, and the party seeks to vote. Am I right in that? [Mr. Corbin. Yes sir.] Not one of these qualifications is stated. The grand jury seems to conclude that three qualifications, three terms of qualifications being stated, he was therefore a qualified voter. But they leave it altogether in the dark whether these parties, or any of them, resided one year in the State, and at least sixty days at the place of election, in the county where they had a right to vote. Are not these matters necessary? Can you give any conclusion like that, which depends upon facts to warrant a special conclusion, by stating three out of five special facts, and omitting the other two, and therefore claiming that they are qualified voters? Can you stop there and claim that your legal conclusion is right, although drawn upon important premises? Why no, may it please your honors. At least I shall not feel myself called upon to argue that point further, until the gentleman insists that it is quite enough to give these three sections, and not the other two, which are quite essential, and perhaps the most

essential of all. Your foreigners should not vote, although they are twenty-one, and are males, and are citizens of the United States.

The allegation is that we conspired to violate that first section, which fixes no penalty and declares no crime for its violation. Undoubtedly the other sections of that statute do, but he has chosen to place his cause upon the first section and upon that alone. The conspiracy is to violate that section—not the fifth section, nor the sixth section, nor the seventh section—but that particular section.

Now, the next count, if the court please, is that these parties, together with diverse other persons, conspired together, with intent to injure, oppress, threaten and intimidate Amzi Rainey. Here the gentleman seems to have understood that it is necessary to name the party injured, and, in that respect, this count is not liable to that objection—that the parties injured are not named. "A citizen of the United States, with intent to prevent and hinder his free exercise and enjoyment of a right and privilege guaranteed and secured to him by the Constitution of the United States, to wit, the right of suffrage, contrary to the act of Congress in such cases made and provided, and against the peace and dignity of the United States."

Amzi Rainey is described as a citizen of the United States; that is all very well; that is the qualification; and his right and privilege is stated to be the right of suffrage secured to him by the Constitution of the United States. Now pray, does the United States secure to a party the right to vote in any State? Does the United States fix the qualifications for such a voter? Wherein has the Constitution of the United States, or Congress, attempted to vest in citizens of States the right to vote and to fix the qualifications? The gentleman perhaps will be able to show me. None of my researches have enabled me to find any such authority in the Constitution or in any act of Congress. Why, is it necessary to argue here that the right to vote, and the qualifications for voting, are fixed by the several States, and they are very different in different States—in some as to age they are different; I think in one as to sex—one Territory, I think, in which the softer sex are allowed to vote; but the right to vote, the qualifications to vote for representatives in Congress, or for electors of President and Vice-President, which are the only Federal officers who can be voted for at all anywhere by the people; the qualifications of such voters are not fixed by Congress any further than that they must have the same qualifications as voters, as the laws of the particular State where they are prescribed for voters to the most numerous branch of the Legislature or General Assembly of that State.

Where has Congress assumed to tell us who shall vote and who shall not vote? What shall be the qualifications? All that Congress have done is to say, that where a white man can vote a black man who has equal qualifications shall vote. Not that white men and black men shall have different qualifications, or that Congress will give black men qualifications which white men have not. Not at all. Simply, Congress says to every State, wherever a white man is qualified by your laws to cast his vote, into the same box the colored man shall be entitled to cast his. The statute speaks to all alike; there shall be no distinction. If you are citizens of the United States, you shall be entitled to vote in every State of the Union, whether you are black or white, or any other color. Color, race, does not, shall not embarrass you in the exercise of that right, but you who have never voted before, you who are excluded

now by the laws of States in consequence of servitude, in consequence of color, all of these restrictions are taken away from you; but we do not give you your qualifications by residence and age and other matters—they are given to you by the laws of the State, and it is to the laws of the State now that you must look for your right to vote. When you come to the polls, your right to vote may be challenged, as a white man's may, because you have not resided a sufficient time within the limits of the voting place, or because you are not of sufficient age, or because you have not registered perhaps. You must fulfil every State regulation that is fixed for white men, otherwise you cannot vote. And, therefore, when you allege the right to vote, it must not be a right under the Constitution and laws of the United States, but as well under the laws of the particular State that fixed the qualifications. Amzi Rainey, therefore, shows no right to vote, alleges no right to vote, except as secured to him by the Constitution and laws of the United States. He says only he is a citizen of the United States; he does not even say that he is twenty-one years of age; he does not say that he resides anywhere in the State of South Carolina, and, more especially in York county, where, I dare say, he had a right to vote. It is the enjoyment of a right and privilege guaranteed and secured to him by the Constitution of the United States not secured to him by the Constitution also of the State. No allegation that he was qualified also by the laws of the State to enjoy that privilege. These two things combined, with regard to colored men, would go to make the right to vote—first, that amendment which abolishes servitude and slavery; and next, that which says there shall be no distinction in voting of race, color, or previous condition of servitude. So far, the Congress helps him to it, to the enjoyment of a right under a State, as a citizen of that State, provided he shows himself possessed of all the qualifications in that State that entitle him to vote. Here, not a single one is alleged, nor is it alleged here that there was any election at which he was hindered or prevented from voting. How could he be prevented or hindered from voting except at an election; and if that is the thing prevented, why did not the gentleman tell us what election, that we might have notice of what we were to defend against.

Again, here comes the objection that the unlawful means by which he was intimidated and prevented from voting, are not set forth. Now, of course there must be such means; such threats, such intimidation, as would deter a man. An exercise of force; a threat of bodily injury; nothing of this kind is alleged. We are left in the dark as to that; where it was, or when it was, that we prevented him; what we agreed to do in order to prevent him; all of this is left out. So much for that count.

Now, the third count, and this is a very important one. This of course brings up more distinctly the grave objections which I said arose in this case—those which no grand jury can demand. These charges are as follows: That these defendants, &c., on such a day at York, &c., "unlawfully did conspire together, with intent to injure, oppress, threaten and intimidate Amzi Rainey, a citizen of the United States, with intent to prevent and to hinder his free exercise and enjoyment of a right and privilege, granted and secured to him by the Constitution and laws of the United States, to wit, the right of suffrage, contrary," &c., and the jurors, &c., "do further present that said Allen Crosby, &c., in the act of committing the offense aforesaid, &c., a dwelling house of the said

Amzi Rainey, &c., burglariously did break and enter, with intent to commit a felony, and that the said A. Crosby, &c., in the said dwelling house being, in and upon the said Amzi Rainey, unlawfully, maliciously, and feloniously did make an assault; and the said Allen Crosby, &c., in and upon the head, shoulders and back of the said Amzi Rainey, then and there unlawfully, maliciously and feloniously did strike, cut and wound, with intent to do unto the said Amzi Rainey some serious bodily harm, contrary to the form of the statute in such cases made and provided, and against the peace and dignity"—of what?—of the State of South Carolina. This last, if the Court please, is a material averment in all indictments.

If the gentlemen wish it I can certainly produce authority, but when I speak in this way to the Court, and state questions of law, I do not state them unless I am certain that I am supported by the authorities. In England as well as in this country this conclusion to an indictment is material, and can never be omitted. In England, it is in the older forms if your honors recollect, *contra pacem, i. e. it is against the peace and dignity of the United States when it is an offence against the United States, and of the State of South Carolina when it is an offence against the State of South Carolina, and to omit it in any indictment vitiates that indictment.* I will state to your honors some authorities on that point. [The counsel here cited from Chitty's Crim. law p. 246, authority in reference to materiality in concluding indictments in the form stated by counsel.]

To show that this old rule of the common law has been adopted in this country, I will read from the first Brightly's Digest, page 206, section 157. I have endeavored to get the cases cited by Brightly, but have been unable to obtain the books in which they are reported. [Counsel here quoted the section in Brightly, referred to by him.]

This third count, as I have said in the first place, goes on to allege that the conspiracy was to oppress, threaten and intimidate Amzi Rainey, a citizen of the United States, with intent to prevent and hinder his free exercise and enjoyment of a right and privilege granted and secured to him by the Constitution and laws of the United States as in the second count, and all my objections made to those other counts for want of certainty, etc., apply equally well to this. What I now want to call the attention of the court to, is an addendum which brings us under this jurisdiction of the State laws. In the first place, your Honors will find that the burglariously entry, charged here, into the dwelling house of Amzi Rainey, is not alleged as an overt act of the conspiracy. ~~Not an overt act, nor as an act within the scope of the conspiracy.~~ It is alleged ~~altogether as an independent act,~~ simply that while in the act of violating the rights of Rainey with respect to the suffrage, they entered his house burglariously in the night time with intent to commit a felony. The intent was not to carry out the purpose of the conspiracy, but with intent to commit a felony, and ~~what felony?~~ A burglary, a totally different felony or crime which is charged in the forepart of the indictment; but with intent to commit a burglary, and the further felony or misdemeanor, to wit, with intent to beat him and to wound him. For what purpose? Simply with the intent to beat and to wound, not to beat and to wound him so that he could not vote. It is alleged simply as a distinct burglary, assault, battery, wounding and cutting. Now, first of all, let me refer to the section stated in this indictment. In the first place I will give the fifth section, which is to hinder and intimidate a person from exerci-

sing the right of suffrage by threats—threats of depriving such person of employment; and then the sixth section, which is the conspiracy section, to effect the same object. Then comes the seventh section, on which this count is framed. [Counsel here read section seven of the Enforcement Act.]

Well, then, as a matter of course, to punish a man for committing a burglary, or a murder, or an assault and battery under this section, his offense must be overt—the indictment must show it and must have a proper conclusion: "It must appear what felony, crime, or misdemeanor has been committed. It won't do to say that, in the act of committing the previous felony or crime, he committed generally a felony, crime or misdemeanor. It might be a murder, and the man would have no notice of whom he murdered. It happened to be burglary here, and the gentleman has very properly drawn a very good indictment. I take no exception to it. He had a form for that, and he has followed the form very accurately. That is, in fact, the only good offense set forth in this whole count.

Now, as I said, what authority have your Honors to try these men? Not burglary of the postoffice? Not a burglary committed in a place where the United States has exclusive jurisdiction and defines the crime of burglary and punishes its soldiers or other parties who commit burglary within that particular locality? Not burglary in a vessel on the high seas or within any arm of the sea, or anywhere where the maritime jurisdiction extends? Not burglary of a postoffice or of a public building of any sort? Not at all. Not a burglary connected in any sense with any function of the Government of the United States or that it is allowed to protect? Not at all? It is simply an individual burglary, wounding, battery, committed in a State—not in a Territory—not in a place beyond the jurisdiction of State or Territory—but committed right within the State jurisdiction, in time of peace. Not in the land or naval forces, but just as expressly a domestic burglary as any. Now, what is this petit jury called here to try? That serious offense of burglary.

Will it be contended that your Honors have any jurisdiction to try or punish a man for any such offense? For you must try him first and find him guilty first, before you can apply the punishment. You may say that the punishment is only intended to be applied to the conspiracy; but I say you must first convict him of the burglary or perhaps of the murder, before you can apply the punishment. Suppose they committed murder in some instances in a place entirely confined as to the jurisdiction, where the United States had no jurisdiction, to try any offense except one committed by one of its officers. He is simply described as a citizen of the State and his house as a dwelling house of a citizen of the State.

Now, suppose it were murder; when you try him for murder—when you are going to punish him for murder—you are going to hang him if he is guilty—how will you ascertain if he is guilty? What authority, what act of Congress gave you the authority to try such an offense as that, and apply such a severe penalty? If the court please, have you any jurisdiction to try such an offense as that? Now, I hold, in the first place, in regard to those criminals and crimes, that in the United States, anywhere, no mere common law offense is within the jurisdiction of any of the United States Courts, circuit, district, or other, and any common law offense over crime, by the United States, must be a crime defined and punished by some act of Congress. There are no crimes mentioned in the Constitution, as crimes, within the cognizance of the General

Government, except those of treason and piracy. Congress had the power of enlarging the jurisdiction over crimes by the Constitution, before these amendments were adopted. In the 8th section of the legislative article, is the provision that Congress may pass any law to carry out the provisions of the Constitution, or any part of it. Congress could establish postoffices, under its constitutional authority. It must protect its postoffices and the carrying of the mails, and define crimes in regard to the protection and sanctity of the mail. So with regard to the coinage of money, which was a matter exclusively belonging to Congress. You will find a vast deal of legislation on the subject of forging. All those crimes are defined and punished. As to the public lands, the offense of trespassing on the public lands, as to navigation and offenses against vessels, piracy, murder on board of vessels, all sorts of crimes committed on board vessels, are provided against because the regulation of commerce and the protection of Congress by the Federal power. They have again with regard to the districts entirely within the jurisdiction of the United States, the jurisdiction of the particular land or soil as granted by the State to Congress there also in the matter of crime, whether it is against the United States, or navigation of the United States, commerce, coinage, or anything but an individual crime, such as murder by A or B, both of them being within a fort or Federal ground, of which exclusive jurisdiction is granted by the State. There Congress legislates with regard to crimes. They do not in any sense interfere with regulations of the State government, because it is in their authority to punish there. The State has surrendered its sovereignty over that particular locality. You cannot try a man for committing a murder in a dock yard by the State laws; therefore, from necessity, the Federal government must punish crimes that happens on Federal grounds. I undertake to say that there is not a law of Congress passed prior to this act, so far as I have seen—and I have been a very long time at the bar and had a great many occasions to look at the Constitution of the United States—and I don't know a single one where an offense against the State sovereignty in a place over which the State has exclusive jurisdiction that does not in any way interfere with any power or duty devolved upon the Congress. I think you may look forever to find any other statute under which such a jurisdiction as is given in that seventh section to try an individual subject exclusively to the jurisdiction of the State for a crime of a domestic nature in that State "and against the peace and dignity of the State."

This, then, is the charge. Being a burglary in York county, South Carolina, in the house of an individual, not an officer of the government, upon the person of that individual not an officer in the exercise of his duty. A burglary and entry into that house, obliged to be with the intent to commit a felony, and that felony specified to be an assault with intent to wound—that being the character of that charge.

I repeat it that there is not an element in it that would give your Honors jurisdiction or call a jury here to pass upon it or permit you to sentence a man to imprisonment for burglary or, maybe, murder; that judgment for murder under any jurisdiction that you have under the constitution of the United States. And your Honors will not forget that it is only under the constitution that you act. And will the gentleman find me any authority in that constitution which will authorize Congress to pass a law to punish crimes committed in this State? If simply domestic crime,

your Honors will not forget that it is ~~not alleged at all that this act was in furtherance of the conspiracy.~~ Not at all. Nor was it a part of the conspiracy. Nor did it come within the scope of the conspiracy, ~~but it was an independent act, with no ally or intent of depriving a man from voting, but an intent to burglariously enter his house to commit a felony—not that he might thereby not be able to go to the polls. It simply ends there with the beating and wounding.~~

This is one of those great questions that arise and deserve the most mature consideration. Your Honors may hesitate—may, perhaps, prefer to refer this question to the Supreme Court of the United States. Undoubtedly, it will go there. It may happen that in the course of any administration of this law, the point, perhaps, not being made, or the defendant being without counsel, the court may run into the difficulty, into the great error, of trying a man for a domestic murder in a court of the United States and hang him.

I therefore object to this count; first, because it concludes against the peace and dignity of South Carolina. Besides this objection, if the court please, and the further objection that I have stated that the charge is particularly against the State, not against the United States, and that this court has no jurisdiction to try that offense. Then the next objection, which I stated to the other counts, that ~~Rainey did not state his qualifications as a voter—that no election is stated at which he was deprived or was to be deprived of voting; that the names are not set out and those qualifications not derived from State laws in any respect which are necessary to arrive at a legal conclusion that he was a voter.~~

~~Now, the fourth count, if the court please, is one that does not charge any conspiracy but charges a ~~violation~~ that at York, on the 1st day of February, 1871, "unlawfully did attempt" not conspire, but did attempt to control Amzi Rainey in exercising the right of suffrage, to whom the right of suffrage is guaranteed by the fifteenth amendment to the constitution of the United States," and now, will the court mark this. Here he did not even state the qualification that Amzi Rainey is so much a citizen of the United States, nor as, in some counts, that he was twenty-one years of age, and charges that they did ~~unlawfully~~ attempt to control Amzi Rainey in exercising the right of suffrage "to whom the right of suffrage is secured and guaranteed by the fifteen amendment of the constitution of the United States, contrary," &c. It does not state as I have said, that he is so much as a citizen of the United States, or that he is of the age of twenty-one years; and states no qualifications necessary to make him a voter in the county of York, except that he is twenty-one years of age, but no qualification as to residence in the State for one year or a residence within the county for sixty days prior to voting. It did not even state generally that he was qualified to vote; did not even state the legal conclusion from the facts; all it states is that Amzi Rainey was controlled in exercising the right of suffrage, to whom the right of suffrage is secured, etc.~~

To whom the right of suffrage is secured. Your honors will recollect that the 13th amendment abolishes slavery, while the 14th declares the colored people shall be citizens, and makes all persons born in this country, or naturalized in this country, citizens of the United States, and securing to such persons their immunities and privileges as such citizens. This is the scope of the fourteenth, ex-



cept its prohibitory clause, which it is not necessary to mention.

Now we come to the fifteenth, which is suffrage. Let us read it. This is the one referred to in this count as the one that gave to Rainey the right of suffrage.

"The right of citizens of the United States to vote, shall not be denied or abridged by the United States, or by any State."

What does this mean? It is a grant? A specification of the qualification necessary to vote? Does it grant the right to vote absolutely, without reference to citizenship? Without reference to residence in any State, without reference to age or sex? Is that the way the gentleman construes this section? That it gives a general grant to all persons, citizens of the United States, to vote? Not merely black and white, but, as well, male and female.

To read it as the gentleman would read it, it is a universal grant of the right to vote to all those persons. But it is not understood in that way. It does not say that the rights of citizens of the United States to vote shall be universal, but the right shall not be denied or abridged by the United States or any State. Why? On account of race, color, or previous condition of servitude?

Now, when we look for the construction of the law—and a very good way is to look at the mischief to be remedied by the law—we look at the previous conditions of things; see what the mischief was and what the remedy is. We must not extend the remedy beyond the known mischief. Now, what was the mischief? Did the citizens of the United States generally require from Congress the grant to vote at an election? Had they not a capacity to vote without a grant from Congress? Was the mischief that white citizens could not vote? That white male citizens having proper qualifications could not vote? Why, no! These amendments were intended to protect the colored race.

The mischief was that black men could not vote in all the States. That those who had been slaves could not vote. That colored men, (although they might have all the qualifications), there was a discrimination against them in many of the States. Some maintained that they could not acquire total citizenship at all, as was held by the Supreme Court of the United States in the Dred Scott case. Now, it was intended to remedy all that.

In the first place slavery was abolished; then, the next, they were made citizens of the United States—which was the first step towards making them voters. What next? Finally by this section they were given the right to vote as white men, that is, this provides that there shall be no discrimination against any citizens of the United States because of their color or previous condition. Is not this the meaning of it? Does it state a qualification or pretend to give a right? It is provided that there shall be against these men made citizens of the United States no right to discriminate on account of color or previous condition. Now a very grave question arises here, whether this can be extended by construction to a right to vote at State elections; whether this is the meaning of it; because, if we give that meaning to it then we violate various other provisions of the constitution, whether or not it is not to be confined to the mere matter of elections in Congress and for electors of President and Vice President. Your Honors will observe that the constitution of the United States makes no provision for the qualification of voters in the State.

It confines itself to the members of Congress. It provides, with regard to Congressmen, certain

qualifications, that they must be twenty-five years of age, and must have resided for seven years within the United States; and it provides, for the Senate, that they must be at least thirty years of age, and resided at least nine years in the State from which they were elected. It makes no further provision for the person, as a candidate; and as to the person and qualification of those who are to vote, there is no qualification anywhere, not even in this amendment, other than that they must be persons qualified to vote for the largest branch of their own domestic assembly, or legislature. The qualifications of voters Congress leaves to the domestic laws of the State. In some of the States most men of color have been allowed to vote, sometimes, with the property qualification. Congress did not interfere with that, any more than to say: you shall not discriminate, if you have a property qualification for black men, in your constitution, to vote, it shall be there no longer; all must be equal. Then, I repeat may it please, your Honors, wherever they found them, the right to vote, upon the fifteenth amendment, they have looked in the wrong place; for, if Amzi Rainey can vote, simply because of the right secured to him by the fifteenth amendment, according to the construction given by the gentleman, he can vote, whether he is twenty-one or not—whether he has resided in York county or not; or whether he is an inhabitant of this State or not. If he receives the grant from Congress, and his authority to vote, he must still fulfil the qualifications required by the State; that is, every one which must be fulfilled by white men must be fulfilled by him.

Now, again, if the Court please, a small matter, but I will state it: There is something necessary to make this indictment a little more certain—"And did attempt to control Amzi Rainey in exercising the right of suffrage, to whom the right of suffrage is secured." Now, your Honors, mark that! "Is secured and guaranteed by the fifteenth amendment!" Now, suppose that amendment gave the right to vote—we refer to the State Constitution of the State still. So much for that.

The fifth count it also does not charge a conspiracy. It charges, first an interference with his exercise of the right of suffrage, just as the fourth count does, and then superadds the charge of bribery.

The sixth count is very much like this, except in this; that the allegation is, "unlawfully did conspire together, with intent to injure, oppress, threaten and intimidate Amzi Rainey, a citizen of the United States, because of his free exercise of a right and privilege granted and secured to him by the Constitution and laws of the United States, to wit: the right of suffrage." When—how prevented? Before an election, or after an election before he voted, or after he voted? Was it a conspiracy to prevent his voting, or a conspiracy to punish him because he voted? It is intended to be the last, otherwise it would be identical with the former count. The language is this: "because of his free exercise of a right and privilege granted and secured to him by the Constitution and laws of the United States." Conspired to injure him because of his free exercise! When? Where? Where did he exercise this right? For what exercise of that right did these men conspire together? All left uncertain! It is impossible to tell whether they intended to injure him prior to or after the exercise of this right. It is not because he exercised his right at a certain election, by voting at that election. It is not alleged that he voted at any election, or that he tried to vote at any election; or, for voting, or trying to vote, he

was afterwards interfered with. I can make nothing out of it, and it is not material that it should be shown, under that section of the statute, that he exercised the right of voting.

The next is the seventh. That is precisely like the one I just read and subject to the same objections. And then again comes this burglary and felony and other matters superadded, "against the peace and dignity of South Carolina."

The eighth count is a new one: "That these defendants did conspire together," with intent to injure, oppress, threaten and intimidate Amzi Rainey, a citizen of the United States, with intent to prevent and hinder his free exercise and enjoyment of a right and privilege granted and secured to him by the constitution of the United States, to-wit: "the right to be secure in his person, houses, papers and effects against unreasonable searches and seizures, contrary to the act of Congress in such cases made and provided." That is the whole count.

There is no act of Congress to secure a man against searches and seizures. It is declared to be a right in the constitution; so is the right of personal liberty and a thousand other rights that are sacred rights secured to me by the constitution of the United States. But I cannot go to a Federal tribunal to vindicate them. On the contrary, there are very few cases that I can go to a Federal tribunal to vindicate. I cannot go to the Supreme Court of the United States to enforce any contract. Generally, it is contracts violated by a State law that come within that jurisdiction, or when I am a citizen of one State I can apply for Federal jurisdiction against a citizen of another State. So in certain other instances upon a claim, under act of Congress, by grant or otherwise, when the State overrules my claim, I can go to the Federal Legislature and protect my title. The constitution gave me the right of personal security to defend that right and recover damages and punish the offender for committing an assault and battery upon me. Can I come to this court, because it is a right secured to me by the constitution? Now I go to a State tribunal competent to give me justice. It is not only an offense against me, but against the dignity of the commonwealth that represents the *patrie* power and guarantees and receives all the rights, immunities and privileges secured to the citizen of the United States by the constitution of the United States. It could not be asked that the United States should do anything more than declare these sacred rights; but as to their enforcement, the Federal jurisdiction is limited, and wherever it is exercised there must be a reason for it, as of residence.

Most certainly these propositions that I am arguing are so plain that I would dismiss a lawyer from my office if he were not quite as familiar with them as I.

We live in the States; we are protected by the States. What surrounds me, when I am at home or here, but State law? That is over me, above me, and around me. Great God! have we forgotten altogether that we are citizens of States, and that we have States to protect us? I am a Union man, in every sense of the word. I have stood by it always, and shall stand up forever for the Union. I am against certain rights called "States rights," but such rights as these, any one that invades such rights will find me, from first to last, with his antagonist. While I would not give to the States rights that have been surrendered to the United States, I will fight to the last ditch, against Federal usurpation, either through the legislative, executive or judicial authority. These are not political

privileges; they are personal, sacred immunities, that attach to us as individuals, and are protected by the domestic law. I hope to God never to live in a country in which the laws of the country, within its proper jurisdiction, does not protect me in the exercise of my rights and privileges.

What is the next count? "unlawfully conspiring to deprive him of the rights secured to him by the law." The equal protection of the law? Why, are not all entitled here to the equal protection of the law? Citizens of South Carolina, am I not just as equally protected in South Carolina as in my own State? Can any man in South Carolina assault me because I am not a citizen of South Carolina? The laws of South Carolina protect me; are bound to protect me. These natural rights, these sacred rights, they belong to every individual and every person. These are the rights that a State is competent to protect, if a State is competent to do anything. Depriving him of the equal protection of the law, how can that be done? What way? The gentleman does not tell us. Why, the only way in which it could be done would be to imprison him where no officer of justice could find him. Again, it is not alleged what law there is that has prevented him having the enjoyment of State laws or Federal. The gentleman has just taken the language of the statute, and attempted to make an indictment by using that language.

If a statute provides that a man shall be imprisoned ten years for committing burglary, it wouldn't do to say in the indictment "that he committed burglary." All the circumstances are not stated in the statute. But they must be in the indictment.

I have seen statutes so full that merely copying the language, with a few verbal alterations, would make a good indictment, but such things are rare.

The tenth count is identical with the ninth, except that the purpose is to deprive him of equal privileges and immunities under the law. The other is "equal protection." This is "equal privileges and immunities," which I have discussed already.

Now comes the eleventh, which is as follows, and I am glad to say it is the last one: "And the jurors aforesaid, etc., present that Allen Crosby, &c., unlawfully did conspire together to injure Amzi Rainey, a citizen of the United States, lawfully entitled to vote, in his person, on account of giving his support, in a lawful manner, in favor of the election of A. S. Wallace, a lawfully qualified person, as a member of the Congress of the United States."

Now, this is intended to embrace a case of a conspiracy to injure the party after he has given his vote, under this law of the statute, "in favor of the election of A. S. Wallace, a lawfully qualified person." What! Wallace a lawfully qualified person—a member of Congress of the United States! Why, it is necessary, under the United States laws, that Mr. Wallace should be twenty-five years of age; that he should have resided in this State seven years; and then, by the State law, that he should have resided in the State, I don't know how long—a year, I suppose. There are no facts to show this. Your Honors should have the facts, in order to draw the legal conclusions—not the District Attorney, nor the jury, for perhaps they might go very much astray. Is not that the universal rule?

At the conclusion of Mr. Stanberry's argument, Mr. Corbin rose and stated that the motion was unexpected to him, and that it would be neces-

sary, in order to reply as he desired, to have additional time, that he might examine the authorities.

Upon Mr. Corbin's suggestion, the Court adjourned until Tuesday at 10 o'clock.

## SIXTH DAY'S PROCEEDINGS, DECEMBER 5.

Judge Hugh L. Bond presiding, Associate Judge Hon. George S. Ryan. The Court met pursuant to adjournment. There were a large number of spectators present; if anything, more than on any preceding day. Mr. Stanberry said:

I want to bring to the notice of your Honors one or two authorities, and will make a further statement as to one point. I read now from Wharton's American Criminal Law, Vol. 3, p. 2200: "If any two or more persons shall conspire or agree falsely and maliciously to charge or indict any other person or cause or procure him to be charged or indicted in any court or criminal jurisdiction, the persons so offending shall be guilty of a misdemeanor," &c.

Now, in note B, "under this statute the particular means intended to be used should be alleged in order that the court may see whether they are in themselves criminal, or amount to a cheat, or obtaining goods by false pretenses. So an indictment for a cheat must set forth the means by which the cheat was effected." Authorities given. "It would therefore seem to follow, that when the charge is a conspiracy to commit those crimes, the indictment should be equally explicit, and such was the defect in the indictment for the correction of errors in Lambert vs. the people, 9 Cowen, 578. In that case the decision was made by a bare majority, but the dissenting opinions were based upon the assumption that a conspiracy to defraud any one of his property by any means, constituted a crime. But the Revised Statutes have put that question at rest by defining the crime in accordance with the decision of the majority of the court on that case, and thus restricting the offense to much narrower limits. But the dissenting members of the court assumed the law to restrict it."

That is, as to stating the manner, you must state such threats as would amount to a prevention, such a threat as would prevent a reasonable man from exercising the suffrage.

Now, from page 2349: "It is important to set forth the names of the parties injured unless a good reason be given for their non-specification." Thus Tindal, C. J., said: "Mr. Pashley for the plaintiffs in error argued that the indictment was bad because it contained a defective statement of the charge of conspiracy, and we agree that it is defective. The charge is that the defendants below conspired to cheat and defraud divers subjects, being tradesmen, of their goods." Here it charges divers persons. "And the objections is that these persons should have been designated by their christian and surnames, as an excuse given, such as that, their names are to the jurors unknown. Because this allegation imports that the intention of the conspiracy was to cheat certain indefinite individuals; as for instance those whom they should afterwards deal with, or afterwards fix upon, it ought to have been described in appropriate terms, showing that the objects of the conspiracy were at the time of making it unascertained, as was in fact done in

the case of Rex de Berenger, and the Queen, vs. Peck."

So much for the threats. Now upon one point, we were arguing to your Honors, the scope of judicial power under the constitution of the United States within a State, and gave various grounds, under which that judicial power might be exercised in reference to the competency of this Court to try this question of burglary. I failed to state another source of Federal power in the judiciary which might be introduced into a State; which it is this; and it is applicable in this case. It might happen that in a part of this State, for instance in York county, and perhaps in certain other counties there are combinations so powerful as to prevent the local courts from putting down this domestic violence, so combined and with such means of interfering with the local authorities that it is impossible for the State authorities and the local authority to protect its citizens from this domestic violence. Under those circumstances who intervenes? What intervenes? the Federal Judicial Power? Not at all. That is not a case for the Federal judiciary to try. In consequence of this combination, in this State, the General Government intervenes with another power. What is that? the Executive power—by force, to do what? To try those parties? Not at all! To bring them into the Circuit Court, or the District Court? Not at all! It intervenes at the request of the Executive of the State, to put down this force, so that the State laws may go into effect. That is, in other words, the soldier must follow the Marshal or Sheriff to see that the State laws are executed. There's no warrant or authority for the Federal Judiciary to intervene to correct the evil. Not at all!

Attorney General Chamberlain, Associate Counsel for the prosecution, in opposition to the motion to quash the indictment, then said:

### ARGUMENT OF HON. D. H. CHAMBERLAIN.

May it please your Honors:

The first exception which has been taken and argued to the present indictment is: That a conspiracy has been charged to violate the first section of the act entitled "An act to enforce the rights of citizens of the United States to vote in the several States of the Union and for other purposes," approved May 31, 1870, and that by reference to the section—the first section of that act—it is found that while a right is declared, the infringement of that right is not prohibited, and that therefore this first count is defective, because it is simply for a violation of the first section, which contains no prohibition or penalty for its violation.

Now if the Court please, it is not from any disrespect of the course which counsel has taken and seriously argued, but it is impossible to conceive how such an objection can seriously be taken to this indictment. I understand the exception to rest upon this ground: That in order to enable us to charge the violation of the first section, of this act, the first section itself must contain a penalty for a violation, must within itself carry a prohibition for the right which it asserts, and of the duty which it defines.

Now, if the Court please, this is all one act. A division of an act into sections does not destroy the entirety of the whole act, and this act would have the same force and effect if it were not divided at all into sections; who can dispute this? Now we do not deny that in reading the first section, we find no prohibition, no notice of the penalty. The section is as follows:

"That all citizens of the United States, who are

or shall be otherwise qualified by law to vote at any election by the people, in any State, territory, district, county, city, parish, township, school-district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections without distinction of race, color, or previous condition of servitude, any constitution, law, customs, usage, or regulation of any State or territory, or by or under its authority to the contrary notwithstanding."

So much for the first section, which is simply an arbitrary, an artificial division of an entire act. Now, further, in the act and the section which gives the right to make this indictment.

[Counsel here read section seven, prescribing penalties, &c., for violations of section one.]

Now, if your honors please, what can be clearer than that in this act we have a right to be clear that just read which does affix a penalty, which does prescribe a violation of the first section; we have a right to use that section in connection with the first to charge this conspiracy to violate this act, to wit, the provisions contained in the first section of the act, that all persons otherwise qualified to vote in the State or in any election shall be allowed and entitled to vote without distinction of race, or color, or previous condition of servitude.

Is it necessary, your honors, that every section of an act that asserts a right or prescribes and defines a duty shall within the limits, the artificial limits, of that very section, enounce a penalty and provide a violation of those provisions? Nothing is more common if your honors please, than for the former part of acts to be occupied with asserting rights and defining duties, and subsequently, but within the limits of the same act, which is always to be treated as a whole, we find penalties prescribed; we find what constitutes a violation of those rights, or an infringement of those duties, set forth.

Under that act all the pleader has to do is to set forth the offence which is charged under the authority of any of the sections of the entire act.

Now, let us examine this again, assuming that the sixth section declares that if two or more persons shall conspire to violate any provision of this act. Is not the first section of this act a provision of it; does it not provide that "all persons otherwise qualified to vote, shall be entitled to vote without distinction of race, color, or previous condition?" Certainly that is a provision of this act. And does not the sixth section of the same act give us the right to indict two or more persons for a conspiracy to violate this first section? We say, therefore, we are not aware, if your honors please, of any custom or any rule of law on the mode of drawing acts or indictments, that would point out that because a particular section of an act did not contain within it an announcement of a penalty, that, therefore, we could not, under a subsequent section of that act, indict for a violation of the provisions of the first section referred to.

The first section and the sixth are one in purpose to enforce the right of citizens to vote. The first section defines the right, the sixth section describes the mode of punishment for a violation of that right. Now, if there be any authorities which would prevent us from indicting for a violation of the first section of that act because that section, instead of the sixth, does not prescribe the penalty, our researches have not enabled us to discover them.

The second exception that has been taken to our first count is that it does not set forth the names of the persons who are to be injured by this conspiracy; of the persons who were the objects of the

conspiracy. Our answer to that is that it is simply not necessary that the names of the persons to be injured shall be set forth in an indictment for a conspiracy. We take this position upon authority: 3, Greenleaf on Evidence, sec. 69, under the head "Conspiracy." "The general rule of the common law is that it is a criminal and indictable offense for two or more to confederate or combine together by concerted means to do that which is unlawful or criminal, to the injury of the public, or portions or classes of the community, or even to the rights of an individual." That is, the objects of the conspiracy may be either: A public, general, or a particular class, or a particular portion of the public, or it may be individuals. And again, in 2 Russell on Crimes, p. 679: "In a recent case it was held to be an indictable offense to conspire on a particular day, by false rumors to raise the prices of the Government public funds, with intent to injure the subjects who should purchase on that day, and that the indictment was well enough drawn without specifying the particular persons who purchased, as the persons intended to be injured; and that the public funds of this Kingdom might mean either British or Irish funds, which since the union were each a part of the United Kingdom." After the argument, upon the motion in arrest of judgment, Lord Ellenborough, C. J., said:

"I am perfectly clear that there is not any ground for the motion in arrest of judgment. A public mischief is stated as the object of this conspiracy. The conspiracy is by false rumors to raise the price of the public funds and securities, and that the crime lies in the act of conspiracy and combination to effect that purpose, and would have been complete although it had not been pursued to its consequences, or the parties would not have been able to carry it into effect. The purpose itself is mischievous; it strikes at the price of a vendible commodity in the market, and if it gives a fictitious price by means of false rumors, it is a fraud levelled against all the public, for it is against all such as may possibly have anything to do with the funds on any particular day."

In the same case Bailey, Justice, said: "It is not necessary to constitute this an offense that it should be prejudicial to the public in its aggregate capacity, or to all the King's subjects; but it is enough if it be prejudicial to a class of the subjects. Here, then, is a conspiracy to effect an illegal end, and not only so, but to effect it by illegal means, because to raise the funds by false rumors is by illegal means."

And by Dampier, Justice: "I own I cannot arise a doubt but that this is a complete crime of conspiracy, according to any definition of it. The means are wrong; they were false rumors. The object was wrong; it was to give a false value to a commodity in a public market, which was injurious to those who had to purchase." In 2 Mass., case of the Commonwealth against Judd, p. 329, the defendants were indicted for that they did conspire together to mix, compound and manufacture a certain base material, in form and color, and with the resemblance of good and genuine indigo, of the best quality of foreign growth and manufacture, with the intent that the same should be sold at public auction, as good and genuine indigo, of the best quality. The opinion of the court was delivered by Parsons, Chief Justice: "The defendants have been indicted for conspiring together, to manufacture of certain materials, mentioned in the indictment, of which one was good indigo of foreign growth. \* \* \* The indictment further charges that, in pursuance of this conspiracy, they, in fact, manu-

held to prove that these divers male citizens of African descent are qualified in all particulars, by national and State law to be voters at elections in this State. That we are ready to do. But we say that this count is complete, and we have only put a burden upon ourselves. If we have gone further than to charge in substance, and not the substance only, but the identical words of the statute, I say we have simply put an additional burden upon ourselves. If we have done more than to charge in the language of the statute, or without further explanation than these defendants conspired together with intent to violate a provision of this act, to wit: its first section.

If the Court please, there are numerous decisions upon this particular law, and applicable to indictments under statutes which I have presented; three or four of them illustrating the application of this principle to the case I propose now to bring before the court. And I state for general convenience from this same work, and also because some of the authorities are not within reach, the case of the State against Gould, 34, N. H., p. 510. Where the words of the statute are descriptive of an offense, the indictment must follow the language of the statute, and expressly charge the respondent with the commission of the described offense in the words of the statute or their equivalents, else their description would be defective. The decision of this case would require us to do the very thing that we have done—charged this offense in the language of the statute.

Another case, State against Hickman, 3 Halsted, 229, "a variance between the language of the statute and the indictment will not vitiate if the words used in the indictment are equivalent to those of the statute," so that if in the language of this authority we had expanded the matter, but still kept ourselves to equivalent terms we should have been within the principle which is decided by this case in 3 Halsted.

There are other cases, hardly necessary to state them, but the principle decided is, that it is not always necessary to describe the offense in the precise words of the statute.

And again, the substance of the offense should be contained in an indictment, or as in another decision, the material words of the statute must be used.

And again, an offense charged in the indictment substantially, pursuant to the indictment, and although there is not a perfect similarity in the words there is no variance in the sense, nor can the variance occur, indeed, in the operation nor construction of the law. So the indictment was held to be good, and another principle decided so many words used in the statutes to describe an offense as are necessary, shall be used to state in the indictment, and in general an indictment need not adopt the very words of the statute; the same substance to a reasonable indictment is sufficient.

Another decision which illustrates the same principle, an English decision, where Justice Coleridge says, speaking generally: Earles' case in the 2 Levin; I am reading still from 1 Bishop on Criminal Laws, Sec. 373. Coleridge, J., said: "A case is established;" and he is speaking of indictments under statutes: "A case is established that is necessary to establish, that the wound was given by an instrument calculated to produce the injury complained of, but they did not go to the length of saying that the instrument must be stated in the indictment. The indictment in this case has followed the words of the statute, and I am of the opinion that it is sufficient." Under a Tennessee statute, providing that no person shall maliciously

shoot or stab another, it has been held sufficient for the indictment to charge that the accused did unlawfully and maliciously shoot, &c. It is unnecessary to describe the weapon, the hand in which it was held, the wound that was inflicted or the circumstances attending the act. That is, when the statute does not require it, you shall not be required to go outside of the statute and conform to common law rules. And this author concludes the examination of a great number of cases upon this matter of the drawing of indictments under statutes with this remark: "Any one who reads our American decisions in detail and observes the diverse adjudications made upon the sufficiency of indictments drawn upon new unexpounded statutes will observe two things, that some judges are more ready than others to accept indictments which merely follow the words of the statute, and secondly, that the tendency in modern times is to require the expansion beyond the words in fewer circumstances than formerly would have been demanded."

Now, if the Court please, would it be claimed that, as in the present instance, after charging a conspiracy not only in the substantial, but in the substantial and exact words of the statute, we are still to go on and designate by name the parties to be injured, describe particularly the means to be employed, set forth particularly the time that was intended it should take effect, and also that we should set forth all the legal qualifications of the parties to vote, whom this conspiracy was intended to remedy or guard? The general answer is that we are drawing an indictment under a statute, and that it is sufficient for us if we make the substantial averments which in the statute are made to state the offense. And in the present instance I cannot be mistaken when I say that all that the statute requires of us is that we shall charge a conspiracy with intent to violate the provisions of this act, and that we have beyond controversy done it, and whatever has followed by way of pointing out a class of individuals to be injured, male citizens of African descent, twenty-one years of age, qualified to vote, has only had this affect, to put upon ourselves the additional burden, when we go before the jury, of proving what we have alleged, but in every other aspect of the case it was unnecessary, and is now properly described as surplusage. The offense which we charge is conspiracy, complete without any overt act, complete, rounded, whole and full the moment the combination was formed with the purpose described, that we have charged as fully as the nature of the offense required of us, and, more than that, as fully as the statute under which we drew it requires it.

I believe, if your honors please, that I have noticed at least all the substantial exceptions which were taken to the first count of this indictment.

And I come now to the second count. The second count charges that these defendants unlawfully did conspire together to injure, oppress, threaten, and intimidate Amos Rainey, a citizen of the United States, with intent to prevent and hinder his free exercise and enjoyments of a right and privilege granted and secured to him by the constitution and laws of the United States, to wit: the right of suffrage.

The first objection which I recall, as made by the distinguished counsel for the defendants, is, that it is not alleged that Rainey was qualified to vote; and that he is simply described as a citizen of the United States.

That is the first objection—that Rainey should have been described; clothed with all his lega

qualifications as a voter in this count of the indictment. Now, we say, in the first place, that this is substantially set forth in this count. When it is stated that he possesses a right and privilege which was secured to him by the constitution and laws of the United States, to wit: the right of suffrage, we say that this is substantial allegation, that he was a qualified voter, because he was in the possession and enjoyment of the right of suffrage, secured and guaranteed to him by the Constitution and laws of the United States, and that any more particular allegation that he was a qualified voter, to wit: a citizen of the legal age, resident for one year in this State, and in York county for six days, are not necessary, but they are all substantially included, when he is described as a citizen of the United States. He possesses the right of suffrage, secured and guaranteed to him by the laws and constitution of the United States.

But further than that, we say as we have said before, that this is a purely statutory offense, and that we have charged the offense in the language of the statute. The language of the statute is, that if two or more persons shall conspire together to injure, oppress, threaten or intimidate any citizen, with intent to prevent or hinder his free exercise and enjoyment of any right or privilege guaranteed to him by the constitution or the laws of the United States, and the indictment has followed the language of the statute, and has charged Allen Crosby and others for conspiring together, (following the exact words of the statute) with intent to oppress, threaten or intimidate. What says the statute? "Any citizen." What says the indictment? Amzi Rainey, a citizen of the United States, with intent to hinder—following the language of the statute—with intent to hinder and prevent the free exercise and enjoyment of a right and privilege granted and secured to him by the constitution and laws of the United States. The indictment follows the language of the statute, and the statute makes it an offense to conspire to deprive, to conspire to injure, threaten and oppress any citizen, and in place of any citizen as named in this act, we placed an individual, Amzi Rainey, a citizen of the United States, with intent to prevent and injure his free exercise of a right and privilege granted and secured to him by the constitution and laws of the United States. Here we say, again, that we have followed the principles of law which govern the framing of indictments under statute; that we have described that offense in the language of the statute, and have applied it to an individual who answers every description and every requirement of the statute, namely, a citizen of the United States, to whom a right is secured or guaranteed by the constitution and laws of the United States.

And further than that, the language of these authorities which we have presented, it was unnecessary for us to go.

Another objection which was urged against the second count of this indictment I believe is the same that was urged against the first count, viz:

That no day of election was named where it was intended that this conspiracy should take effect. Of course all that we have said in answer to that objection with reference to the first count, is equally applicable to this second count, and I shall not repeat it.

Another objection, also, which I have noticed, as taken to the second count, is again, that the unlawful means are not set forth. In this second count, one great answer, if your Honors please, to all this, is that it is suggested by the nature of the offense which we are charging; that it is an offense of the

nature which does not depend, if your Honors please, upon the means employed, or upon the day when it is intended they shall take effect, nor the individuals against whom, it is an offense, that is complete short of that. It is an offense which consist wholly and entirely of a combination or agreement, by concerted action, to do an unlawful thing.

Now, I ask, can it be necessary, in order to charge substantially and fully, in order to put these defendants fairly in possession of everything that constitutes an essential ingredient of the charge which is brought against them, we shall specify the means, or name the day upon which this conspiracy was to be consummated?

When such a conspiracy as this shall be in motion, and I wish, if your honors please, that I could draw from my imagination, I wish I could divest myself of the knowledge that when I state this case, I am not stating an actual occurrence in South Carolina, in this year of grace.

Let us suppose that a combination of two hundred or more persons appear at the door of a colored citizen, in some county in this State. That they break violently into his house. That they smite down his wife, and next ravish his daughter, and then fell him to the floor. Then they drag him forth upon the public highway and when the controversy rages high whether he shall be bung or simply whipped that if he will hold up his right hand and swear before God, that he will never again exercise his own free choice in the matter of suffrage his life shall be spared.

Suppose that all those facts may appear, and suppose that the name of this colored citizen is Amzi Rainey. These conspirators are at last brought before the court, charged with the conspiracy, which I have now supposed, and it is said that it is essential to this offense, with which they are charged, that we shall name some particular day when that general oath, which they forced him to take was to prevent him from voting.

Our distinguished friend says he urges nothing cautiously, takes advantage of no technicalities and no formalities, but he is here, simply—substantially—to defend his clients from this substantial charge—conspiracy. And yet when that man whose name I have supposed to be Amzi Rainey is utterly deprived by threats and violence, of the right of suffrage, they say that we must go further; and although we have made him take an oath that he will never exercise his choice in the casting of his ballot, we must, forsooth, go further and name a particular day upon which Amzi Rainey should be prevented—be prevented from exercising his free choice in casting his ballot.

Let us, if the court please, if it be necessary, let us redeem the law from such aspersions upon its purpose and its requirements as to validity, as that would fix it to it. It is not law, it is not reason. This offense was complete when they compelled Amzi Rainey to take an oath that he would never again vote as he chose. When they had interfered with the free exercise of this right of suffrage, and no matter whether in point of fact the election day ever arrived, or Amzi Rainey did not exercise the right of suffrage, they had completed their conspiracy. They had evoked upon themselves the punishment which the laws affix to the crime of conspiracy.

So that our answer to that objection is two-fold; first that the crime is complete and its description is complete in this second count of the indictment, and second, that we have done all that the statute requires of us, and that this is a statutory offense, purely so, and that every authority requires us

crime of burglary; nor that this jury should convict, and this court punish for the crime of burglary, but simply this, that if it appears that in committing the conspiracy, ~~the crime of burglary, or any other felony was committed then not upon conviction of the burglary, but upon the conviction of the conspiracy, or whatever offense was charged in the two preceding sections, the measure of punishment for the conspiracy, not for the burglary, should be the same which attaches to the crime of burglary, or any other crimes, according to the laws of South Carolina.~~ Now, if your honors please, it seems to me, that this comes very far short of claiming jurisdiction for this court over the crime of burglary.

It is simply, if your honors please, a mode pointed out by this statute, for arriving at the proper punishment to be affixed, not the burglary, I repeat, but to the conspiracy. It is simply a statutory mode of determining, for this court, how much punishment shall be imposed upon these defendants. If they are found guilty by this Court for the crime of conspiracy there is to be no conviction of burglary, there is to be no conviction for any offense; that which is charged as against the peace and dignity of the United States. But the statute provides that if in the act against the United States they shall commit any other felony—what? that this Court shall punish them for that felony? No; but upon conviction of the crime that is charged against them as against the peace and dignity of the United States, the punishment of that crime shall be regulated and determined by the punishment that is affixed to the crime of burglary under our State laws. Well, now, if your Honors please, we find as a matter of fact, in the investigation of this case, as we believe, that the crime of burglary, according to the laws of South Carolina, had been committed in this instance, and therefore we stated it in form and manner according to the laws of South Carolina.

But we have not placed it here in this count in connection with this count upon the theory at all that this Court, or the jury of this Court are authorized to bring in a verdict, upon this count, of burglary, against the peace and dignity of South Carolina, but that the statute in order to enable this Court to fix the proper penalty to the crime of conspiracy has authorized us to enquire in this count whether an additional crime or felony has been committed or not, and not to convict, as I have said and repeat, nor to punish for that crime, but simply to ascertain whether that crime has been committed, and if it has been committed, then to let it be a measure of the offense which is charged as against the peace and dignity of the United States. Now, that is our theory of this law; that is our idea of what the law intended that this count should do; that is the theory upon which this count in the indictment is drawn, and in this view of it, if your honors please, it does not claim jurisdiction of any offense committed in South Carolina, against the laws of South Carolina, but simply authorizes this court through its jury to inquire whether their crime of burglary, or any other felony or crime, against the laws of this State have been committed. And if so, to make that the measure of its punishment of the offense against the laws of the United States.

Mr. Stanberry.—How does the court inquire; how find the fact?

Mr. Chamberlain.—The jury finds the fact, thus, "guilty of the third count." That is, if the verdict is generally given—guilty of a conspiracy against Amzi Rainey, and that in committing this conspiracy they committed the offense of burglary. Or,

suppose that they do not find—that we are not able to establish the burglary, the verdict would be "guilty of conspiracy, but not guilty of the commission of the crime of burglary, in the act of committing the conspiracy." A special verdict, such as is set forth in this Massachusetts case, "guilty of manufacturing the indigo, but not of selling it." In other words, a special verdict. But if your honors please, this indictment, so far as our duty in construing and presenting it here, is defensible upon the ground that we have done precisely what the statute authorized and intended that we should do; that if, in the act of violating any provision in either of the two preceding sections they shall commit any other felony, upon the conviction of conspiracy, they shall be punished according to the felony, and we consider that in charging this burglary—the incorporation of this burglary, under the laws of South Carolina, into this count, in order to fix the quantum of punishment, which this court may award to the conspiracy, falls very far short of claiming for this court that they may take cognizance of the crime of burglary and try and punish it. They are not authorized in this act to punish for burglary; the act does not attempt to say they have the power to punish for burglary, but it does authorize an inquiry in connection with the conspiracy whether the crime has been committed. If it appears by the verdict of the jury that the crime of burglary, according to the law of South Carolina, has been committed, then what? That you sentence them for burglary? Not at all. That stops at that point, and you simply look into the laws of South Carolina to find the punishment which you would affix to the crime of burglary if you had jurisdiction over it, and then, you affix that punishment not to the burglary, but to the conspiracy. Now, if your honors please, we come to the fourth count, and I will be as brief as possible.

The substantial exceptions urged to the fourth count are similar to the preceding counts, that it does not allege that Rainey was a citizen of the United States. The fourth count charges Allen Crosby and three other defendants with an attempt to control Amzi Rainey in the exercise of the right of suffrage, and though this count is drawn under the fifth section of the act, it charges the direct offense and not the conspiracy to commit an offense. It charges the direct offense of an attempt to control Amzi Rainey in the exercise of the right of suffrage, and the objection is made that we have not stated that Amzi Rainey is a citizen of the United States. Our answer is, that the statute does not require us in order to complete this offense to state that he was a citizen of the United States. The court will observe that we have examined this act, and that we have had our reasons whether good or otherwise, for the manner of drawing these indictments.

The fifth section under which this fourth count is drawn, simply says "if any person shall prevent, hinder, control or intimidate, or shall attempt to hinder, control or intimidate" what; any citizen of the United States? Not at all; "any person from exercising or in exercising the right of suffrage," and so instead of saying Amzi Rainey, a citizen of the United States, duly qualified to vote, we have simply said, Amzi Rainey, a person. It is also objected that it is not stated, that the right was then secured to him, but that the language of the count is "to whom the right of suffrage is secured and guaranteed by the 15th amendment to the Constitution of the United States. We cannot think there is substance to that objection.

The amendment—the court has judicial knowledge, was then in force, for the rights secured by the



fifteenth amendment have always been secured since that amendment has been in force. Another objection is, that it is not alleged that he was otherwise qualified to vote than by the fifteenth amendment, and in this respect we follow again the language of the statute which simply says, "to whom the right of suffrage guaranteed by the Constitution of the United States—the statute does not require us to do more than to say that it was guaranteed and secured by the fifteenth amendment to the Constitution of the United States. There is no reference or requirement, but the objection is raised that the fifteenth amendment clothes no one with the right of suffrage absolute.

We are disposed to admit, if your honors please, that the fifteenth amendment does not clothe any one absolutely with the right of suffrage; but that it is substantially, practically and really secured to the colored people of the United States, to those who have been slaves, or who are of a dark color, or of African descent.

We say that the objection is two fold, that the fifteenth amendment gives to them the right to vote, strictly speaking, it only protects them, we agree, with counsel for the defense; it only protects them against discrimination on account of race, color or previous condition, but, practically, really, as a great public fact through out the length and breadth of the Union the fifteenth amendment does secure and does guarantee to this class of our citizens the right to vote, and it was so regarded by Congress, in making use of this language which we have exactly followed in this section of the act. "to whom the right of suffrage is secured or guaranteed by the fifteenth amendment to the Constitution of the United States."

Again, the objection appears that no election is set forth, and our answer is, before the objection to the fifth count, which is the same as the fourth, with the addition that in committing the offense they did commit burglary according to the laws of South Carolina. The same objections are taken and the same answers are applicable.

We come now to the sixth count, which charges a conspiracy with intent to injure, threaten or intimidate Amzi Rainey, a citizen of the United States, because of the attempt to use them, granted and secured to him by the constitution and laws of the United States, to wit: the right of suffrage. The same objections as to persons, means, &c.—as were urged to the second count, are urged to this, and in addition that it contains no separate allegation—I believe that was the objection, that he actually exercised the right. It simply charges that the conspiracy was with the intent to injure, oppress, threaten and intimidate him, because of his free exercise. Our answer again is that here we have followed the language of the statute. It simply requires us to charge that he was oppressed, threatened or intimidated, or that the conspiracy was to threaten and intimidate him, because of his free exercise of the right.

I would say again, as we have said to every objection to this indictment, that it is substantially and sufficiently averred in the allegation that it was because of his exercise of the right of suffrage that we should go further and say that he exercised, and because of that exercise he was oppressed and intimidated. In the first place, we have followed the statute strictly, and in the next place, according to the common law principles, we have sufficiently averred it in stating that it was done because of his exercise of the right of suffrage.

The seventh count is of the same offense,

together with the crime of burglary and of that I have nothing further to say.

We come now to the eighth count, which charges a conspiracy, with intent to deprive Amzi Rainey of a right and privilege, secured to him by the Constitution of the United States, to wit: the right to be secure in his person, houses, papers and effects from unreasonable searches and seizures.

The objection that was urged against this count—the main objection—is that this is a right which can only be protected and vindicated by the State laws. That while it is undeniable that citizens of the United States have the right under the Constitution, its fourth amendment, to be secure in their person, houses, papers and effects, from unreasonable searches and seizures, yet that it is a right which depends in its practical value and enforcement upon the State laws; I believe I am correct in stating the objection. I think counsel for the defendants agreed yesterday that the concluding section of the fourteenth and fifteenth amendment, which clothed Congress with the power by appropriate legislation to enforce the provisions of those two constitutional amendments, were not necessary; that the general power had already been reserved to the Congress to enforce the provisions—the rights that were secured by the Constitution to the citizens of the United States.

All that is precisely what we claim in the present instance this act claims to do. That is precisely what we claim is the purpose of this act, to enforce this right of the people of the United States, to be secure against unreasonable searches and seizure, through a statute of the United States. And if the power to enforce and secure to citizens of the United States, the rights that are guaranteed to them by the Constitution, does reside in Congress, as I understand the counsel to agree on yesterday, that subsequently, those sections of the 14th and 15th amendments were unnecessary, then here is a statute which undertakes directly and without leaving it any longer to State laws to protect the citizen of the United States from unreasonable searches and seizure. Congress, it is admitted, if I am not mistaken, has the right to secure to its citizens their constitutional privileges, immunities, and rights by appropriate legislation, and how is the legislation which seeks to secure to Amzi Rainey his rights under the Constitution, to be secure in his person, papers and effects, from unreasonable searches and seizures? What is to prevent the Congress of the United States from doing this?

I acknowledge with the counsel who addressed you yesterday, that almost every personal right to which he referred, as the right to be secure from an assault here in this court house, is secured to him by the State laws. But is it not also competent, if those rights are guaranteed to citizens of the United States by the constitution of the United States, is it not an admitted right of Congress, by appropriate legislation, directly to enforce those rights, and no longer to leave them only concurrently to be exercised by the State courts. It is true, as the counsel said yesterday, that he and I are protected in all our constitutional rights by the laws of our respective States. But it is not true, if your honors please, of Amzi Rainey, and many others; and Congress saw it, and in an exercise of power, which, I understand counsel to admit as belonging to Congress, it has said we will protect you. The constitution of the country protects you. The right to

be secure against unreasonable searches and seizures. You are not secure. Large classes of the citizens of the United States are not secure, and we denounce a penalty against those who shall conspire to rob you of these constitutional rights.

The ninth, tenth and eleventh counts of this indictment, as the court is aware, are drawn under the provision of the act of April 20, 1871.

The ninth count, which is a conspiracy for the purpose of preventing Amzi Rainey of the equal protection of the laws, contrary to the act of Congress, in such case made and provided, and against the peace and dignity of the United States. And that is the charge.

This count is founded upon the second section of the act of April 25th, 1871, which provides that if two or more persons in any State, shall conspire together—omitting unnecessary words—for the purpose of depriving any person or class of persons of the equal protection of the laws. We have followed the language of the statute, and we have charged these defendants with conspiracy together to deprive any person, to wit: Amzi Rainey, of the equal protection of the laws. The objection is made that we should have said what laws, what manner, and on what occasion. Our first answer is, that the statute does not require this, that the offense exists under the provisions of the statutes which are simply and only, that they shall conspire to deprive a person of the equal protection of the laws.

The tenth count is for a similar conspiracy of equal privileges and immunities under the law. And here, too, we followed the exact language, "shall conspire together to deprive any person from equal protection under the laws."

The same objections are made to this count, and the answer is the same. That we have followed the statute, and that is purely a statutory offense. The last count charges a similar conspiracy for the purpose of depriving Amzi Rainey, a citizen of the United States, lawfully entitled to vote in his person, on account of his having given his support in a lawful manner, in favor of the election of A. S. Wallace, a lawfully qualified person, as member of Congress of the United States.

And here again we have followed, in every particular, the language of the statute. If two or more persons shall conspire together to injure any citizen—"did conspire together to injure Amzi Rainey"—in his person or property.

The count charges that they did conspire to injure Amzi Rainey in his person, on account of such support and advocacy.

I think I heard something yesterday about the necessity for charging that it was for voting. Some reference to the word support, instead of vote. The word "support" is a statutory word, and we have so charged it—on account of giving his support in a lawful manner in favor of the election of any lawfully qualified person; "in favor of the election of A. S. Wallace, a lawfully qualified person"—as a member of the Congress of the United States.

In all these particulars we have followed the language of the statute.

A recess was here taken, at the conclusion of which the District Attorney addressed the court in opposition to the motion to quash, after which the court adjourned till to-morrow.

## SEVENTH DAY'S PROCEEDINGS, DECEMBER 6.

Hon. Hugh L. Bond, Circuit Judge presiding, Hon. Geo. S. Bryan, District Judge and Associate Justice.

On motion of J. D. Witherspoon, Attorney, Bishop Sanderfer and John Little, of York county, charged with conspiracy, were admitted to bail in the sum of \$3000 each, Mr. Edward Hope becoming security.

In the case of the United States vs. Allen Crosby and others, for violation of the enforcement act, the opinion of the court was delivered on the motion to quash. It was read by the presiding Judge, and is as follows:

### OPINION.

After the prolonged and very able argument of counsel upon this motion to quash, we feel embarrassed, gentlemen, that upon so little deliberation we are to pass judgment upon the grave question raised here. But the fact that so many persons are now in confinement upon these charges, and that so many witnesses are in attendance upon the court, at great personal expense, makes it necessary that we should not delay longer. And the first objection to the first count in the indictment is, that the section of the act of May 31, 1870, which this count charges the parties with conspiring to violate, declares no penalty for the offense.

The first section of the act declares a right. It is referred to in this count by its number, and with sufficient certainty, it seems to us, to enable the parties charged after trial to plead the verdict rendered in this case in bar to another indictment. After declaring the right, the statute proceeds in section seven to define the punishment for its violation. It is not necessary, it seems to us, that each section of the act should contain or disclose the penalty for its infraction. That is often, as in this statute, referred to, a later and generally to the closing section of the act defining the crime or offense, and is made applicable to all the antecedent sections. It is objected, moreover, that this count does not contain the names of the parties, who being entitled to vote, were to be hindered and prevented from the exercise of the elective franchise by the traversees.

It must be remembered that this is not an indictment to punish a wrong done to individuals against the peace and dignity of the United States, but for a conspiracy to do that wrong. The offense is completed the moment the compact is formed, whether any person within the contemplation of the first section has actually been hindered or not. If the traversees never committed any overt act, but separated and went home after the completion of the conspiracy, they have incurred the penalty which the seventh section prescribes. So it makes no difference what particular person the conspiracy when put in motion first reached. The act complained of is the conspiracy, and if it be true that any person was hindered or prevented from the exercise of the right granted by the first section, such hindrance and prevention is only proof of the conspiracy, and does not in anywise tend to make the crime more complete.

It is generally sufficient in charging a statutory offense, to set it out in the words of the statute.

If the statute uses a common law name for a crime which it proposes to punish, the indictment

must set forth the various ingredients of the crime which go to make up the offense at common law. But when the statute itself creates the offense and defines it, it is sufficient if the indictment use the words of the statute, unless the words be indefinite and vague, ambiguous or general, in which case the indictment must so particularize the act complained of that the party charged shall be in no doubt of the offense alleged against him.

The certainty required is, that which will enable him to plead the verdict in bar of any future action.

It is alleged, in this count, that this conspiracy was to go into operation, at an election not yet held, to wit, the third Wednesday of October, 1872, and it is objected that this is not sufficient. That the right to vote is not a continuing right, but exists only at the time of its immediate exercise.

It would be strange, indeed, if parties could not be punished if it be necessary to punish them at all, for any offense but those committed against this act, on election day, and in the direct exercise of the elective franchise. The usefulness of the act of Congress would be entirely frustrated by such requirement. A man may be so effectually intimidated weeks before an election, that he would not dare to go within a mile of the polls, and all the mischief the act is intended to remedy would flourish and no punishment could be awarded them under this construction, because the right to vote is not a subsisting right, but one which recurs to the citizen on election day. We do not so hold.

The uncertainty which the count leaves as to whether this was a State election or a Federal is urged as fatal.

The indictment charges that this was a conspiracy to violate the first section of the act. This section declares that all citizens shall be allowed to vote at all elections, who are qualified by law to vote, without distinction of race, color or previous condition of servitude.

Congress has never assumed the power to prescribe the qualifications of voters in the several States. To do so is left entirely with the States themselves.

But the constitution has declared that the States shall make no distinction on the grounds stated in this first section, and by this legislation Congress has endeavored in a way which Congress thought appropriate to enforce it.

It is this act of appropriate legislation, and the first section of it which the defendants are charged with violating, and we think it makes no difference at what election, whether it be State or Federal, he is intimidated or hindered from voting, because of his race, color or previous condition of servitude.

Congress may have found it difficult to devise a method by which to punish a State which, by law, made such distinction, and may have thought that legislation most likely to secure the end in view, which punished the individual citizen who acted by virtue of a State law, or upon his individual responsibility.

If the act be within the scope of the amendment and in the line of its purpose, Congress is the sole judge of its appropriateness.

The next objection, which is that the count does not set forth the qualification of the voter, is sufficiently answered, we think, in the remarks we have made respecting the requirements of indictments setting forth statutory offenses.

We are of opinion that the second count of the indictment is bad, because it does not allege that Ausi Rainey was qualified to vote: and for another

reason more fatal, that it alleges the right of Rainey to vote to be a right and privilege granted to him by the constitution of the United States. This, as we have shown, is not so. The right of a citizen to vote depends upon the laws of the State in which he resides, and is not granted to him by the constitution of the United States, nor is such right guaranteed to him by that instrument. All that is guaranteed is that he shall not be deprived of the suffrage by reason of his race, color or previous condition of servitude.

The third count is a repetition of the second, with a clause setting out a charge of burglary, concerning the court's jurisdiction over such charge. The court is divided in opinion, and will therefore make no comment on it at this time.

The fourth count is obnoxious to the objection that neither the citizenship of Rainey, nor the fact of his qualifications to vote is set out.

The fifth count repeats the charge contained in the fourth, with the additional clause contained in the third count, and the court refrains from noticing it for the reasons given as to the third count.

The sixth count is intended to charge a conspiracy to oppress Rainey for having, prior to 1st February, 1871, exercised the right of suffrage, and would be good if it were drawn with the particularity of the first count, which charges a conspiracy to oppress, to prevent the future exercise of this right. It does not, however, contain any allegation of the fact of qualification, nor that the party was entitled to vote in York county, or any where else, or that he ever exercised his right to vote.

The seventh count is a repetition of the sixth, with the charge of burglary added as in the third count.

The eighth count alleges a conspiracy to prevent and hinder Rainey from the exercise of a right secured to him by the constitution of the United States, which is defined to be the right to be secure in his person and papers against unreasonable search.

The article in the constitution of the United States to enforce which this count is supposed to be drawn, has long been decided to be a mere restriction upon the United States itself. The right to be secure in one's house, is not a right derived from the constitution, but it existed long before the adoption of the constitution, at common law, and cannot be said to come within the meaning of the words of the act "right, privilege or immunity granted or secured by the constitution of the United States."

The ninth count is entirely too indefinite, and the defendants could not possibly know from its language with what offense they were charged, and the same objection is valid as to the tenth count.

The eleventh and last count of the indictment charges a conspiracy to injure Rainey because he had previously voted for a member of Congress. We have no doubt of the power of Congress to interfere in the protection of voters at Federal elections, and that that power existed before the adoption of either of the recent amendments. It is a power necessary to the existence of Congress, and this count seems to set forth the charge with sufficient perspicuity, and is not liable to the objections urged against it.

The motion to quash is over-ruled as to the first and eleventh counts of the indictment, and sustained as to the others, excepting such as the court is divided respecting.

Mr. Stanbery offered an entry which he had

drawn in case there should be a difference of opinion on the question of the counts that referred to burglary.

Mr. Corbin said, with the permission of the court, he would withdraw the burglary count whenever it appeared in the indictment, with the distinct understanding that if they should feel it desirable to renew that count they might do so, giving the defense an opportunity to object, if they desired it.

Mr. Stanbery objected that the gentleman could not enter a *nolle prosequi* at this stage of the case.

Mr. Johnson thought the opinion of the court having been given that that part of the indictment should be quashed, there was nothing to be withdrawn, and the division should be certified to the court above.

Judge Bond. There is no question in the case, when the counts in the indictment are not before the court, but are withdrawn.

Mr. Stanbery said that the act of Congress was peremptory that when the court were divided they were to certify their division to the Supreme Court.

Mr. Johnson. The counts are not before the court, but the indictments are, and the counts are in the indictment. The prosecution attempted to sustain each one of the counts in the indictment; there are three or four of the counts, if not more, that charge that some other crimes than felony were committed, and a felony as expressly prohibited by the several sections under which these counts have been framed. After the court has divided in opinion on that, we submit we are entitled to have that question certified to the Supreme Court. We are not to wait here till the counsel think proper to bring up some other case. Why should not the question be decided at the earliest possible moment? for it is one of great moment and gravity—a question involving the authority of the United States and the authority of the States of the United States—and is a question of interest to the whole public, and not to the people of South Carolina alone. The decision pronounced there will settle it for all time.

Judge Bond. The difficulty is, Mr. Johnson, that we cannot send a question up to the Supreme Court, which does not actually exist in any case happening in the court. The government has withdrawn the count which raised the question, and the Supreme Court will be determining a question which does not exist in any case in the court, at this time.

Mr. Stanbery again objected to the entry of a *nol pros.* without the consent of the defendants.

Mr. Johnson. When your honors say that the case is not before the court, with due deference to that impression, I think that you are under a misapprehension. The case was before the court this morning, when your honors pronounced your decision. You have told the prosecutor that they cannot go before the jury, because the law is against them, or at least that you are divided in opinion. What has put it out of the court?

Judge Bryan. My judgment of the question is as to whether the court has not the discretion to deny the motion of the counsel, and I am of opinion that the court has that discretion; they cannot act absolutely, and it is dependent upon the court whether they shall, and I am of the decided opinion that the construction that is passed is a very vital one and one that ought to be given at the first moment. It is not necessary, simply in this case, but

it is of importance to every State, and for the country, and the sooner the Supreme Court can act upon this matter the better. As far as I am concerned I do not agree to the motion of the counsel.

Mr. Corbin. If the court please, there is one objection to which I do not think it necessary to call the attention of the court, because I thought the court saw it clearly, as I did. That is this: The court have pronounced a judgment of *bad* upon the count to which this charge of burglary is attached, and I had it in mind to hand out an indictment to meet this objection, and then attach another crime, another felony, to it.

Mr. Johnson. Nothing can go up except the constitutionality of that particular provision. The sole question will be: Has Congress the right to provide that if wrong be committed, and a particular offense against which Congress has legislated, the offense of burglary or any other felony known to the laws of South Carolina—whether the statutes of South Carolina have the right to try it—that is, necessarily, the only question which can be argued in the Supreme Court. Did I understand the court as to what counts were bad.

Mr. Corbin. I understand the court, in the opinion delivered, to say that all the counts are bad except the burglary count, and about that the court is divided.

Judge Bond. The first and last the court sustains.

Judge Bryan. That involves the proper punishment, under the law.

Mr. Johnson. Some of the others were bad, I understood the court to say, and upon some the court were divided.

Judge Bond. And now the prosecution asks permission of the court to withdraw his counts alleging the burglary.

Mr. Johnson. We deny their right.

Judge Bond. The court is of opinion that they have a right.

Mr. Johnson. The Court is not of the opinion.

Judge Bond. I say I am.

Judge Bryan. The court is divided—it is divided.

Mr. Johnson. Then the motion of the United States to withdraw, being a motion upon which your honors are divided, cannot be granted; we therefore ask your honors to sign that [passing to the court the entry proposed by Mr. Stanbery.]

The court engaged a moment in private consultation.

Judge Bryan. The presiding Judge is of the opinion that, as presiding Judge, his decision in this matter give the law in the case, subject to the point that you can make, for error in his judgment.

Mr. Johnson. I am not sure, may it please your honor, that I understand you.

Judge Bryan. The presiding Judge is of opinion that his ruling governs this motion, subject to my difference of opinion.

Mr. Johnson. How are we to have the benefit in the Supreme Court, if this motion goes there?

Judge Bond. Mr. Johnson, I prefer to state what I think myself. The counsel having submitted a motion to withdraw the burglary counts in the indictment, I am of opinion that he has the right to do it, and ought to be allowed to do it. The District Judge differs from me. The question is, what opinion prevails, as a matter of practice.

Judge Bryan. It is as I have stated.

Mr. Stanbery. My recollection is that in a case which comes from the District Court by a writ of error where the Circuit Court and the District Court

sit together that the opinion of the presiding judge prevails—

Judge Bryan. We never sit together in appeals. Mr. Stanberry. Then the opinion of the presiding Judge of the Circuit Court prevails, unless in the formation of this court a contrary practice prevails.

Mr. Corbin. Suppose this division should be certified to the Supreme Court, what good would be effected now that so many counts are struck out? We don't want to wait, but we propose to go on and try this case.

Mr. Stanberry here referred the court to chap. 5, p. 677, Conklin's Treatise, as to the course to be pursued upon certificate of agreement of opinion between the Judges of the Circuit Court.

Judge Bryan. It is suggested by my brother that a case may be made in the indictment to be brought in to-morrow, and that this case be allowed to go on. Let us try this, subject to no future issue; if that meets the views of the counsel it will be agreeable to the court. The difficulty in this case is that we have had witnesses attending here who have been in attendance for a long while. In the case suggested to be introduced to-morrow there will be no witnesses. There will be no argument about it.

Mr. Johnson. There are a good many witnesses, I understand, on both sides.

Judge Bond.—Had we not better proceed to get a jury?

The defense asked an adjournment, as their witnesses had not yet arrived; but it was finally concluded to impanel the jury, and then wait until the witnesses should appear.

Counsel for the Government inquired if it was the purpose of the defense to sever in the challenges, and upon being informed that it was, announced that they, then, would sever in the trials, and dispose of each prisoner separately.

Shored Childers, alias "Bunk" Childers, was first arraigned, and, after reading the first and last counts in the indictment, asked—

Clerk. How say you; are you guilty or not guilty?

Prisoner. Not guilty.

Clerk. Are you ready for trial?

Prisoner. No sir; my witnesses are not here.

Judge Bond. We do not propose to go to trial. Who is counsel for the party?

Mr. Wilson. I am his counsel.

Judge Bond. Are you ready?

Mr. Wilson. No, sir.

Mr. Corbin. If it please the court, I would like to know whether we are trying cases here at the pleasure of the United States, after proper notice to all the parties, or at the pleasure of the prisoners. We have given these parties nearly four weeks' notice, of every charge, and be ready for trial, and I think the government has spent time and money enough.

Mr. Johnson. They have spent quite money enough—

Judge Bond. The court understands you are not counsel in this case.

Mr. Wilson. He is associated with me. He and Mr. Stanberry.

Mr. Hart. If your honors will permit me I will make a statement. On last Saturday Mr. Wilson was not present in Columbia, and I temporarily took charge of his case. I think on the Friday

previous I applied to your honors for an order to have witnesses summoned at the expense of the Government in certain cases. Your honors then declined to issue the order, and led me to believe that possibly such an order would not be issued. On Saturday that order was granted, but as no mail left until Monday I presume the subpoenas did not reach these witnesses before Tuesday, and yesterday probably was the day on which they were served. They may not reach here before to-day or to-morrow.

Mr. Corbin called the attention of the court to page 590 of Conklin's Treatise, in which Chief Justice Marshall, on the trial of Burr, made use of language in relation to unnecessary delay on the part of the defense, and applied the words of the Chief Justice to the desire on the part of the defendant's counsel for delay in this matter, and said: "Now this party was arrested some four weeks ago and soon after, or at least two weeks before the term, was notified that he must be ready for trial at this term. Two weeks of the term have gone by, and yet he is not ready. In the language of the court in this Burr case, he must be ready for trial."

Judge Bond. It is not asking a delay until next term, but merely to get his witnesses here. We will go on and impanel the jury to-day.

The court called as a juror to be sworn in the case, Andrew W. Curtis, colored, and asked the prisoner to accept or challenge him.

Prisoner. I reject him.

Mr. Corbin. We object to the prisoner's right of peremptory challenge.

Mr. Stanberry. We are entitled not only to one but ten of these challenges.

Mr. Chamberlain. You are entitled to ten if any.

Mr. Johnson. You make an objection, now give us the reason.

Mr. Corbin. If the court please, I call the attention of the court to Blatchford's Circuit Court Reports, p. 470. The case of the United States against George Cottingham.

The court decided in this case, from which counsel made copious extracts, that the prisoner had no right to peremptory challenges except in capital cases. Counsel also referred to the case of the United States against Reid, 2 Blatchford, 447, and read to the court a note, attached to the report of the case, which cites for authority the United States vs. Merchant, 12 Wheaton, 480, and United States vs. Wilson, 1 Baldwin. He also read the Judiciary Act of 1829, the act of July 20, 1840, and quoted United States vs. Reed, 12 Howard, 361. He then continued:

Now, if the court please, we call attention to the second section of the act of Congress of 1865, 2 Brightly, p. 107: "When the offense charged be treason or a capital offense, the defendant shall be entitled to twenty, and the United States to five peremptory challenges; in a trial for any other offense in which the right of peremptory challenge now exists, the defendant shall be entitled to ten and the United States to two peremptory challenges." What we say, if the court please, as appears from the decision to which we have referred, the right of peremptory challenge does not now exist

at common law in criminal cases in the courts of the United States. We will quote another authority, a very recent one; we call the attention of the court to the case of United States against Sheppard, found in Abbot's United States Reports, vol. 1, p. 435.

Counsel read the portions of the decision referred to, which, in his estimation applied to the question under discussion, and continued:

This case also cites United States against Reed, 12 Howard, 365. That is all we desire to say. If the court desires it, I will present the case in 12, Howard, although it may be familiar to the court. This case came before the Supreme Court, on a certificate of division, and Chief Justice Taney delivered the opinion of the court.

Counsel quoted very largely from this opinion and continued:

The point in this case is this, if the court please, and we quote it for the purpose of showing that the common law and not the statute law of any State is the law by which the proceedings are governed, in criminal trials, in this court. That relates not only to the testimony of witnesses, but also to challenges.

Mr. Stanbery. The question before your honors is, whether we are entitled to a peremptory challenge, or whether we are to be confined to challenges for favor. I suppose there can be no question about that, and that it is perfectly well settled by the act of Congress—this subject of challenge—to wit: that in cases of treason there are to be twenty on behalf of the defendant, and in all other cases below the grade of treason, felony, misdemeanors, and crimes and offenses of that character, the accused is entitled to ten peremptory challenges, the government to two in treason the accused to twenty and the government to five; keeping about the same proportion. The gentleman reads the statute, the act of 1865, which regulates the criminal procedure. What is the 45th section as given here on page 107? "When the offense charged be treason, or a capital offense, the defendant shall be entitled to twenty, and the United States to five peremptory challenges. In a trial for any other offense in which the right of peremptory challenge now exists, the defendant shall be entitled to ten, and the United States to two peremptory challenges."

Now, I understand the gentleman to say, that though this secures the right of peremptory challenge, in all crimes—in treason, to be that of ten jurors for the defendant, and two for the United States; yet, inasmuch as it is said, "where it now exists," the gentleman says it is all nugatory because there is no statute of the United States, as I understand him to say, which, prior to this gives a peremptory challenge, in the case of treason. Is that the point?

Mr. Corbin. No sir.

Judge Bond. That act of Congress provides that the right of challenge shall continue where it now exists by law. Where the right now exists. The question is whether that means that the right now exists by State law or common law, or the law of Congress; and if you look at the act proceeding that you will find I think the number of challenges regulated. For instance, I think there is an act which says that where a misdemeanor has been committed upon the high seas, that the number of challenges shall be two, and there are frequent acts of Congress which prescribe the number of challenges in particular cases. Now the question is whether that act of 1865, speaking

for the present instance, does not refer to this previous act of Congress.

Mr. Stanbery. Whether it does not refer to those particular misdemeanors which were previously created? Then is the question in the mind of your honor, whether the challenge is confined to those very cases of offenses committed on the high seas?

Judge Bond. Yes sir, that is the question.

Mr. Stanbery. Well, if the court please, I must then take time to see where the section is. This will illustrate it: on the same page [quoting a section in the act of 1865, which gave three challenges in a particular case.] Why that would be perfectly ridiculous. They could not have ten for that case. In the same act in the prior section, the law only gives three; it did not refer to that case at all. The law is not made for that particular case. But that is a misdemeanor, and this is a misdemeanor.

But this shows, if the court please, that the right is not to be confined to cases where already peremptory challenges are fixed and provided for. It would leave this absurdity, you would have one rule in one case, and another in another. What does it mean then? As there is no general law of the United States that provides a right of challenge, you must resort necessarily either to the common law or the State law, if wherever it exists—that is the word. Not where it exists under Federal legislation, but as well under State legislation. To follow the States in trials as much as possible, is the policy of the United States courts. Wherever it is found to exist as a right, then it is to be applied, subject only to those cases where special provisions are made by Congress. Now, if the court please, how far shall the courts go in this matter of following the State legislation. Let me read from the act of 1840, p. 407, Conklin's Treatise.

[Counsel here read from the act of July 20, 1840.]

It seems to me, if the court please, that it is perfectly clear that if we do not find in the statutes of the United States any provision for the right of peremptory challenges in cases of felony or misdemeanor, why, wherever we find it to exist under State laws, this court must apply it and give the party the benefit, because it is a most important privilege. When the legislature made provision in the case of an offense on the high seas, they saw fit to limit peremptory challenges to three, but they saw fit to give in this case ten, a much more grave offense than the gentlemen say is charged in their counts which they say charge a felony, punishable perhaps by ten years imprisonment and \$5,000 fine. Now, in the State of South Carolina, where we are, in cases of misdemeanor, as I am informed, the right of challenge is allowed—also in cases of felony—five in one and twenty in the other. Well, Congress prevents us from adopting that number by substituting the number ten wherever in the trial of a cause in any court of the United States, that right of peremptory challenge exists as to such offense. Your Honors will recollect that this is a provision in favor of the liberty and rights of the party. These are provisions that are to be most benignly and liberally construed. Congress intended to give the right of peremptory challenge, and said wherever it existed before, it shall hereafter be to the number of ten in limiting this to the States, not to an act of Congress.

Mr. Johnson. Your honors will permit me to add a word or two. One thing is historically certain, may it please your honors. The object of Congress, so far as it has power to accomplish it, was to place trials on the same footing in courts of

the United States as they are in courts of the States in which courts of the United States may sit. The thirty-fourth section of the act of '69, which was interpreted by the Supreme Court in twelfth Howard—perhaps the words would have comprehended criminal as well as civil cases—but the Supreme Court by that decision held, and I have no doubt held properly that the true meaning of that section was to confine it altogether to civil cases. As far as the offense was concerned the proposition there was, the question there was, whether a party who would have been a competent witness under the statute laws of Virginia in a criminal case could be used as a witness in a case arising under the laws of the United States, could be used in the courts of the United States. The Supreme Court said that he could not. The act referred to of 1865 gives the right of challenge—twenty in one description of cases—or rather recognized the right of challenge—and in the other right to challenge, peremptorily, ten. Now it would be clear that if the words found in this section as it now exists were not there, that the right to the challenge would exist. The words would comprehend it. The object would not be accomplished without giving it that interpretation.

But it is supposed, by the counsel for the United States, that the operation of the act of '65—that portion of it—is to be regulated by what they consider to be the meaning of the words, in that section, "as it now exists."

They maintain that it is necessary to show, first, by common law, that peremptory challenge exists in South Carolina, or, secondly, that if the common law does not give the right, that it exists by some statute law of Congress; so what the sole question resolves itself into this: What did Congress mean by saying that the right to challenge should be exercised by a party charged with a misdemeanor, &c? Did they mean to say that the right of peremptory challenge must exist by some statute law of Congress or by common law? They have used the general phraseology, which, as I understand it, means this, and, to apply it to a particular case, that if, on the trial for a misdemeanor in South Carolina, the right of challenge exists, it is a right which also exists on the trial of a like offense in the courts of the United States. Congress never designed that there should be two modes of trial, never designed that the prisoner should be less secure in obtaining a fair trial, when he was indicted in a court of the United States, from the security which is afforded him by the laws of the State, if he had been prosecuted in some State court.

Uniformity in this, as in everything else, was the object of the original act of '69, and was the object of the act of '40, and is the object of the act of '65. Now, my brothers' construction of the act '65 leads to this result, that it accomplishes nothing whatever, for if it is to be restricted to a case in which the right of challenge exists, why was it passed at all? If by the common law the challenge was the right of the prisoner; if by the statute law of the United States it was the right of the prisoner; if by the State law it was the right of the prisoner, there was no necessity for any legislation. None whatever. But the necessity for legislation arose from this, that Congress did not think proper to adopt the right of challenge as exercised in the statute law of the State, or under the common law. They might have thought that a right to challenge twenty ought not to exist. They might have thought that a right to challenge less than ten ought not to prevail. Their sole object, then, as I submit to the court, was to provide for the exercise of that right

to the whole extent that they deemed necessary that the right should exist.

Now, your honors, the question before you is whether the words "where the right now exists," are to be referred to the right of challenge as granted by some act of Congress; or to a right of challenge as existing under the common law; or under the State law. We find no such words in the act, may it please your honor.

In the trial of any crime in the United States Court, the party should be entitled to the right of challenge of ten, in certain cases, and the United States to five, provided there exists in the State of South Carolina a right to challenge in such a case. That is to say, in any particular case of misdemeanor—in any particular case of felony. If there exists in South Carolina a right to challenge in the case of misdemeanor or in the case of felony, then it may be exercised in the courts of the United States within the prescribed limits marked out by the act of 1865. Suppose that the words "as it now exists" refer to the right of challenge as provided by the antecedent act of 1865, or to any other antecedent act, by which the right of challenge in cases of misdemeanor or of felony existed, we are brought to the same result. The act of 1865 does not say that the right to challenge in a case of misdemeanor or in a case of felony, exists only in such cases as there may be such right—in certain cases of misdemeanor or in certain cases of felony; but as I understand it, wherever there exists such a right in a trial for a misdemeanor, the act applies and the party is entitled to his right of challenge if he be tried in the courts of the United States; or wherever there exists such a right in a case of felony, the act of 1865 applies, enlarging the right in this case, it may be, diminishing the right in the last. The purpose is, as I apprehend, that the right of challenge should exist in the courts of the United States in all cases where the right of challenge existed under the State law; either by act of Congress or by State legislation, or by common law legislation, they intended that it should exist as modified when they passed the second section of the act.

Mr. Chamberlain. If your honors please, it is admitted, I believe—it must be apparent—that if the right which is now claimed for these defendants, of ten peremptory challenges, is to be sustained, it must be upon the language of the act of March 6, 1865, which is as follows: "When the offense charged be treason, or a capital offense, the defendant shall be entitled to twenty and the United States to five peremptory challenges," and the argument of force, it seems to me, which is urged against the view for which we contend, is that our construction makes those words nugatory. That if our construction prevails there is no other cause, no other offense below treason, or a capital offense, where the right of peremptory challenge does now exist. Well, now, if your honors please, at the outset it strikes me that it is somewhat less to ask this court to decide that an act of Congress is nugatory, than to make nugatory the decisions of the courts, which have established the proposition for which we contend; that, in cases below capital, no right of peremptory challenge exists.

The utmost you do, if your Honors please, in sustaining us according to the claim of the distinguished counsel for the defense, is simply that you say, there is no other cause, and therefore that clause in the act of March 3, 1865, is nugatory. Well, now, in looking for authorities upon such a question as this, we naturally refer to Brightly's Federal Digest, which brings the cases down to 1868 complete; and looking there, the first section



that strikes us is the section under the head of "Challenges," where it is laid down, without any qualifications, that peremptory challenges are not allowed in any other than capital cases, and the authorities are cited. The first case that is referred to is in 2d Blatchford, p. 407. The case of the United States against Cottingham, already cited. This was an indictment against clerks in the post-office at Albany, New York, for opening a letter and stealing money therefrom.

Now, if the court will follow this case it will be seen to be an exact analogy upon such a case as has now arisen here.

Judge Bond. What is the date of that decision?

Mr. Chamberlain. 1852.

Mr. Johnson. Before the act of 1865 was passed?

Mr. Chamberlain. Before the act of 1865 was passed.

The statute refers to the law and says, "where the right now exists," and I say that unless, between 1852 and 1865, counsel are able to produce some decision or some law which gives that right, they did not exist at that time.

Well, now, what is this case? On the trial counsel for the prisoner claimed the right to peremptory challenges and the case was decided by Nelson, Judge, sitting in the Northern district of New York.

Mr. Stanbery. Before you proceed farther, here is an authority.

In the case of the U. S. against the Beaufort Commissioners, April term, 1871, before your honors, a misdemeanor was on trial, and the court held that the laws of South Carolina in reference to challenges in cases of misdemeanor is the rule in the United States courts, and allow peremptory challenges to either side.

Mr. Corbin. That was by agreement of counsel.

Judge Bond. Yes sir, there was no decision of that kind on our part; it was agreed to by counsel.

Mr. Stanbery. Then counsel agreed to change the law.

Mr. Corbin. We agree to it to prevent any argument.

Judge Bryan. It was done, as the counsel states, to save time, long controversy. It was conceded in that particular that they should be entitled to so many challenges.

Mr. Stanbery to Mr. Chamberlain. You had better agree to it, to save time in this case.

Mr. Chamberlain. I think, if the court please, we have been held in sufficient strictness to justify us to insist upon all the rights the United States has in the case.

When I was interrupted, if your honors please, I was reading this decision of the United States against Cottingham. It was a case where the counsel for the prisoner claimed that the challenges

allowed by the State law should prevail in the trial of this offense for opening a letter in the post-office and stealing money therefrom, under the revised statutes of New York; and Nelson, Judge, decided that the prisoner had no right to any of the peremptory challenges claimed because such challenges were not allowed in common law in any other than capital cases.

I don't know, if your Honors please, what decision could be more emphatic or broader or more unquestionable than this decision. And here devolves this duty upon the counsel who are making this claim that they shall show us that, between this decision and the passage of the act of March 3, '65, there was some law or some division to establish a right to peremptory challenges in cases less than capital. Now, the reference in this case is to a note, in the United States against Reid, which is found on page 447 of this same volume of Blatchford. This case involved questions relating to juries, to their qualification, to the mode of their selection, their summoning and their return, and it was held that the State regulations respecting such challenges—challenges for cause—challenge to the army—challenges for favor—that all these things attach to the qualification of the panel, and that, secondly, State regulations do apply to challenges to the array, or for favor, or for a cause shown; but they decided, very expressly, that peremptory challenges in criminal cases in the Federal courts are regulated by the common law.

Mr. Chamberlain called the particular attention of the Court to the note at the foot of page 407 of Blatchford, in the case of United States vs. Reid. He continued:

Now, your honors, in further confirmation of this view, I refer to the decision of the Supreme Court in 12 Howard. The decision which has been read by my associate, where Chief Justice Taney giving the reason why these rules are not extended to criminal cases, is that the United States does not intend to put itself, in trials for offenses against itself, within the power of any State to frustrate or prevent the execution of the law by any unreasonable laws of the State. Qualifications and exemptions where the court have the power to require the party who is challenged to show cause, there is no danger of abuse, because the court can control it. And so it is not a good cause of challenge, it does not constitute a legal exemption. They never intended, as these decisions show, to go outside of that into the domain of peremptory challenges, and subject themselves to any rule that the State law might provide.

It is incumbent to show that the right of peremptory challenge exists in this case, or else it is not protected by the act of 1865. Does it exist? Where does it exist? What authority is there for adopting the rules of the State, with respect to peremp-

tory challenge? Qualifications and exemptions are regulated by State law, when they have been adopted by a rule of the court. But peremptory challenges, according to the decisions, have always been regulated by principles of common law, and we have not a word, or decision cited, nor a particle of authority, but simply some reasoning upon the act of 1865, which amounts to this: that, if you agree with us, in excluding these peremptory challenges, you will have said to Congress, that there is a clause in your act, that is simply nugatory. That is not a conclusion from which any court need to shrink, especially when the current of decisions supports them, in the view that peremptory challenges are not allowed in any cases less than capital.

Something has been said about both these offenses in the 1st and 11th counts, being simply misdemeanors. If that be so, the defense is worse off in respect to challenges than they would be if they let this first count remain a felony, because a misdemeanor, by the laws of South Carolina, is not entitled to a single peremptory challenge.

Mr. Stanberry. Yes, sir; to five.

Mr. Chamberlain. The gentleman is right about the State law. If they could make the State law the rule by this court they would be entitled according to it to five peremptory challenges and the State to two, but that is precisely what the decision I have cited to your Honors now say has never been intended and has never been done. All other challenges than peremptory for a reason that is perfectly apparent and conclusive, the State rules have been excepted to in this matter of peremptory challenge, and the Government of the United States has always adhered to the common law rule and allowed no peremptory challenge in offenses less than capital.

As I have said we are entitled before this argument should go against us, to have some other authority, some decision, especially when one is not a matter of argument, but a matter of decision. We are reasoning about this statute, but we are showing that up to the time of the passage of that act, no right of peremptory challenge did exist in cases less than capital. There is authority and no reason but the old one, that Chief Justice Taney and all the authorities gave that peremptory challenges not being scrutinizable the courts have no mode of protecting themselves against the mere caprice, whim, and anxiety of the party to clear himself, they will not admit it. But in that matter will adhere strictly to the common law, which does not permit such peremptory challenge.

Mr. Stanberry. I desire to call the special attention of the court to a passage in Wharton's American Criminal Law, to the statute regulating challenges, found in section 2958.

The prosecution in this case is that of felony. There it exists in the common law, giving more

than we require, viz: twenty challenges, and we ask ten here. Wharton gives the laws of the United States, and coming to this one he makes no comment upon it, but simply speaks of peremptory challenges as now existing. It must exist either by the statutes of the United States, by the common law, or by the statute of the particular State where the case is tried. It exists in the common law, if this be felony as they claim it to be, and it exists in the statutes of South Carolina, if it be felony, entitling us to twenty challenges, and it exists also in South Carolina if it be a misdemeanor, and entitles us to five. Now this answers all the authorities the gentlemen have given us, and there was no such challenge in force when the court delivered this opinion in New York, for it does not exist there. The commentator, in the quotations I have read, makes no comment, but simply gives it as the rule. Your Honors must determine, before you can exclude it, where it exists.

Mr. Corbin. The authorities and the express decisions cited by this author are comments upon what he has stated as to the decisions of our Circuit Courts in Michigan, New York and other places. There was a very recent decision, of which, I regret to say, I have only a note, but it is since the statute referred to, and is given in the seventh Internal Revenue Record. It was a case of misdemeanor, and was decided in New York city, in which case it was decided that peremptory challenges are not allowed in cases of misdemeanor in Federal Courts. The court in that case decided, upon common law ground, that there are no such things as peremptory challenges in common law cases. The case I refer to is that of the United States vs. Devolin.

Judge Bryan. The opinion of the court is, that we are cut off from any resort to State legislation or State practice as a source of instruction and as furnishing a rule to us. By the decision in Howard, we are shut up to the common law as furnishing the rule in this case. The practice of the courts in civil cases, by that decision, does not furnish the rule in criminal cases. If the common law, therefore, does not give the right of peremptory challenge in such a case as this, there is no other source from which the right can be derived. The decision of Justice Nelson is that the court decided that the prisoner had no right to any peremptory challenge, claiming that such challenge was not allowed, in common law, in other than capital cases. The question is, whether that ruling is correct. If it is a fact; if it is binding on the court. But is it not a fact, as he stated, that peremptory challenge is not adopted in common law in other than capital cases? Is that disputed?

Mr. Johnson. Certainly it is! We say it exists in all cases of felonies, and the authority just read by my colleague, says so.

Judge Bryan. That is the point upon which we desire to be advised.

Mr. Stanbery. I will read another authority upon that point, that peremptory challenges by the defendant are admitted without assigning any reason. [Mr. Stanbery here read section 2958, from 3 Wharton.

Judge Bryan. That is the case of capital felonies, is it not?

Mr. Stanbery. The word "capital" is not introduced.

Mr. Corbin. I desire to read to the court section 2956, from the very same work, to show that at common law the defendant was required to show cause, while the Government was not.

Judge Bryan. This is a matter of grave consequence. We are shut up by a very severe decision to an unexpected result, as in a case of this kind where the State has the right of challenge, and we are forced to a conclusion under the decision in Howard, that there is no progress whatever in criminal matters to us here in the United States Courts; that the unmodified common law and the common law as modified by statutes and prevailing in South Carolina and England, at the time of the adoption of the Constitution before the unmodified common law, shall be the rule of this court.

I think that the conclusion made the law, but it seems to me it is carrying the decision in Howard very far, carrying it beyond its just intention, that we should be shut up to unmodified common law, in common law as modified by statute at the time of the adoption of the constitution of the United States, modified in South Carolina and England, but the common law as unmodified by statute, that is the common law under the rule of practice in England, and the rule of practice here, as modified by common law, but the common law itself unmodified. Under these circumstances, desire to look more carefully into the decision in Howard to see whether we are shut up to such a conclusion; that is if we are cut off from all progress and are to accept the common law as unmodified in the common law as modified by statutes, at the time of the adoption of the constitution of the United States to the unmodified common law as the rule of our action.

Mr. Johnson. If your Honor will permit what I before desired to say but failed to do so, that I am satisfied that the decision of Howard was the correct one. Indeed, it would be very bad taste in me, of which I trust I should not be guilty, to assail any decision of the Supreme Court of the United States.

Judge Bryan. We both accept the decision. It is only the application about which there is a doubt.

Mr. Johnson. I should be very sorry if your honors did not accept the decision of the Supreme

Court of the United States. If you look at the reasoning of the Chief Justice you will find it does not cover such a case as this. He puts this construction of the act of 1789 upon the ground that to construe it as applying to rules of evidence, that to place the execution of the laws of the United States judiciary in the hands of the States they might make rules of evidence which it would be impossible for the United States to comply with so as to carry out their own laws. The counsel on the other side concede, notwithstanding the case in Howard, that the laws of the States in relation to the summoning of juries, the impanelling and qualification of jurors, the right of objection to the panel, &c., are all in the courts of the United States what they are in the courts of the State where the courts of the United States may be sitting.

Now, for the soul of me, I cannot distinguish between the right of a prisoner to have the benefit of a peremptory challenge if it exists in the State court, upon the ground that that would interfere with the execution of the laws of the courts. I ask how and in what way? There is nothing to prevent the laws being executed. Peremptory challenge necessarily specific would be exhaustive, and when exhaustive, the jury are to be summoned, and the laws of the United States, so far as they are enforced in the court, are to be carried out. But that is not the case, for the courts of the United States are made and bound to observe the rules of evidence which the laws of the States may from time to time prescribe.

The court then adjourned until Friday at 11 A. M.

#### EIGHTH DAY'S PROCEEDINGS, DECEMBER 8.

The Court met pursuant to adjournment, his Honor Judge Bond presiding, District Judge George S. Bryan, Associate Justice.

In further support of the claim of the defense of peremptory challenges, Mr. Stanbery said:

*May it please your Honors:* At the adjournment yesterday, the point, as it seemed to me, was whether in finding authority for peremptory challenge under the law of 1865, we were necessarily remitted to the common law on the subject of felony, and to no other source; and your Honor, the presiding Judge, directed me to inquire as to whether at common law any but capital felonies were entitled to the benefit of peremptory challenge.

Now, if the court please, as to that, I certainly must answer your honor's question: that, if we look to the unmodified common law, it extended the right of peremptory challenge, not only to felonies punishable capitally, but I apprehend, if the court please, that it is a right, even when we look at the

common law, as we understand the common law in this country, in felonies less than capital. There has been a great dispute as to how much of the common and statute law of England our ancestors brought to this country. There have been many disputes as to whether they brought with them the statute of Uses, and whether they brought with them the statute of Elizabeth on the subject of challenges. But every safe rule is, as to statutes not so old as 43d Elizabeth, or the statute of Uses—the more modern English statutes altering the common law—that those that were in existence at the time our ancestors came into this country, dating as far back as the reign of James I, enter into the body of the common law.

Judge Bryan. Will you suffer me to interrupt you? I stated that our difficulty was to the application of the decision in Howard. He himself supplies the answer—gives the rule—on page 185.

[Judge Bryan then read from the opinion in Howard, in the United States vs. Reid.]

Now we are to show what the right of challenge was in South Carolina before the passage of the Judiciary Act in 1789.

Mr. Stanbery. I am advised as to that, if the court please, by an officer of the court, the clerk, that prior to the act of 1789 there was a statute in South Carolina which allowed twenty peremptory challenges in favor of any defendant who was indicted for what was called a clergyable felony; that is, for a felony punishable by death.

Under the law of England, and, perhaps, under the statute of South Carolina—which allowed the benefit of clergy, and receiving the benefit of clergy the death penalty was removed, and branding perhaps, or some other punishment substituted.

The State, then, of South Carolina, at the date of the passage of that act of 1789, extended the right of peremptory challenge, to the number of twenty jurors, to the defendant, indicted for a clergyable felony, that is, one not punishable by death, where the benefit of clergy was allowed. I am told further, by the clerk, that acting under the statute of 1789, the practice of these courts, of the United States, while he has been an officer of the court, and that is for more than twenty years—

Clerk. The practice in the State courts I was alluding to; not the United States courts.

Mr. Stanbery. Yes, sir, the practice in the State, which has been uniformly to allow twenty peremptory challenges, so that this act of Congress, so far as we are concerned, takes away one-half of the number which existed in 1789. In addition to that, to show what is the common law, let me read from 1 Kent, 472. Here the Chancellor is looking for the source of our common law and says: "It is also the established doctrine that English statutes, passed before the emigration of our ancestors, and applicable to our situation, and in amendment of

the law, constitute a part of the common law of this country."

On page 609, Mr. Conklin says that the statute of Edward denied the right of peremptory challenge to the crown, but under that statute it has been the practice to put aside the juror without cause until it appears that there will not be a full jury without such person, and referred to United States vs. Merchant & Colson, where this important rule of English practice, as stated by the court, is made applicable to criminal proceedings in the United States courts.

It is not, therefore, the whole, bare, unchanged, unmodified, common law, that we must look to for our right, which, under the severities of our early common law, punished almost every felony with death, and allowed to no inferior crime the benefit of challenge of jurors.

In view of the law of these decisions if the court please, we are entitled to ten challenges, and but for these rules, would have been entitled to twenty under the established State law in 1789. As early as the year 1712, I find by looking at the statutes of South Carolina, that this was the law of South Carolina: "No person arraigned for any petit treason, murder, or felony, shall be from henceforth admitted to any peremptory challenge above the number of xx."

Judge Bryan. The rule I think is abundantly clearly stated in the case of Reid; and the application of that rule is, that you must show that at the time this act was passed, under the law of South Carolina, (that is common law, as modified by the Legislature of South Carolina—the laws of South Carolina prevailing at that time,) the right existed. That is the rule, and when that is explicitly the rule, then under that law you are entitled to peremptory challenge. Under the recent enactment of Congress peremptory challenge is not limited to capital cases in my judgment the right of challenge extends to all cases to which the right of challenge extended in 1789, when this judiciary act was passed. This ruling of Howard, accepting the law of the States at that time, or the common law as modified by the legislation of the State at that time, is the rule governing the courts of the United States. That is, the same laws which prevailed in the State courts at that time would prevail in the United States Courts. If, therefore the right of challenge existed at that date, then the right of challenge was extended by Congress to cases other than those not capital, and to felonies not capital. That is my judgment.

Mr. Johnson. Is that the opinion of the Court?

Judge Bond. What is that remark, Mr. Johnson?

Mr. Johnson. I asked if this ruling that we are entitled to the right of challenge, as limited by the act of 1865, is the ruling of the court.

Judge Bond. I am of opinion that the right of challenge is determined by the number of challenges allowed at common law; and that at common law in no case is the right of challenge allowed but in capital cases; and that the judiciary act adopts the number of the common law. I think with Mr.

Justice Nelson that, in these cases, the right of challenge does not exist—the right of peremptory challenge.

Mr. Johnson. Do your Honors divide upon the point?

Judge Bond. So far, Mr. Johnson, as this case is concerned, as my associate has, apparently, given it some consideration, I am ready to yield the point to his judgment, and allow you the peremptory challenge.

At this point of the proceedings, the clerk of the court placed the names of the fifty-one petit jurors who had been empanelled, and which were written on slips of paper, in a hat. From the whole a jury of twelve were to be drawn.

Mr. Stanbery. We see here is a difference of opinion with your honors as to the construction of this new act of Congress for the trial and punishment of these offenses. In view of the necessity of having these questions settled by the final arbitration of the Supreme Court, we have proposed to the opposite counsel, and if the court agree, we are agreed on all sides to take a short way in the disposal of this case, reserving the only question to be argued before this court under the arrest of judgment, and then upon the next case, which is, I understand, for murder, we shall make these questions and have the division of opinion certified there, and wait for further trial till we have the opinion of the Supreme Court.

Judge Bond. Does the counsel for the prosecution consent?

Mr. Corbin. Not unless the court be divided and the court think there is no other way of getting out of the difficulty. I am in the hands of the court. It is a point I would not personally consent to, but if the court is divided and if the views of the counsel are entertained by one of the court, and the proceedings are blocked in this way, I do not see what else we can do.

Judge Bond. There is no difference of opinion in this case; you may proceed in this case.

Mr. Stanbery. The gentlemen agree to take up this question in the next case.

Judge Bond. It may not be necessary. We will stop proceedings in the case to which we take exception.

Mr. Stanbery. Our associate counsel, who is special counsel for the prisoners, desires to present an application to the court.

Mr. Wilson. There are, may it please the court, important and grave preliminary questions made by the defense in this case, because it was the first presented by the government. We desire now to say to the court, as counsel for the prisoner, Sherod Childers, that he voluntarily confessed to an officer of the government, that he was with the party charged in the indictment. He now enters the plea of guilty, but he will ask the court, before he is sentenced, to submit affidavits that he was not a participant in the acts and felonies alleged, or even cognizant of them, which, if of the atrocious character stated by the Attorney-General, in his opening speech, we are not here to defend, excuse, or palliate them. The prisoner is ready to enter a plea of GUILTY.

Mr. Johnson. We withdraw the plea of not guilty.

Judge Bond. Would it not be better for the court to hear your witnesses and the witnesses on the other side, that the court may learn the character of the case.

Mr. Stanbery. That is usually done by affidavits.

Mr. Wilson. We make the same statement and enter the same plea, for Hezekiah Porter. I only speak for those two.

Mr. Stanbery. These parties plead guilty on the first and eleventh counts. Now, in the last count I observe that the day they are held for the commission of the offense—ordinarily immaterial—is the day succeeding the passage of the law which I suppose we must call the Ku Klux law, which was passed on the 20th April, 1871, while the act committed by these parties was on a day in March preceding. It was no offense under this law, for the law did not propose to be *ex post facto* in punishing a crime committed, and we wish it understood in pleading guilty to these counts if they were guilty of them, so that they may not be prejudiced as being guilty of a crime not committed at the time this act was passed. Whether they can attempt to locate it under that act as being a conspiracy is a question which we can discuss at the proper time.

Mr. Corbin. The assault and battery in the case of Sherod Childers, took place as a matter of fact on the 22d of March, but we should have endeavored to show had we gone on with the trial that the conspiracy was a continuing and still-existing conspiracy. It was a conspiracy with its organization and by-laws, and was in full blast on the 20th of April when that other act was passed.

Mr. Johnson. In pleading guilty, we wish it borne in mind that the offense was committed on 22d of March, while the law was passed on the 21st of April. The count charges a conspiracy that was carried into effect by an assault and battery committed on Rainey. So far as that count is concerned, there can be no doubt that there must be a judgment in the prisoners' favor upon that count, for, at the time the offense was committed, there was no law prohibiting the offense.

At this point, on the suggestion of Mr. Corbin, the court discharged the grand jury until tomorrow at 10 o'clock.

Mr. Corbin asked of the court an order for the discharge of Merritt Fuller, a *nol. pros.* having been entered, and stated that the prisoner had been in jail eight or nine months, and had already suffered as long an imprisonment as is usually inflicted by the court for offenses with which the prisoner was charged.

Mr. Witherspoon submitted a motion for the bail of Reuben McCall, of York county, offering Dr. J. M. Lowrey and Thomas Lowrey as his sureties, who were accepted.

After considerable delay, the prisoners Sherod Childers, Evens Murphy and William Montgomery, were brought into court, and each for himself pleaded guilty to the first and eleventh counts in the indictment. Hezekiah Porter not appearing with the other prisoners, it was determined to receive his personal plea of guilty to the same counts, on Saturday.

Monday was set down for the hearing of the affidavits in mitigation of sentence.

Thereupon the court adjourned until Saturday at 11 o'clock.

## NINTH DAY'S PROCEEDINGS, DEC. 9.

Hon. Hugh L. Bond, presiding judge. Hon. George S. Bryan, district judge.

The court met at 11 A. M. After the calling of the roll of jurors, the grand jury having retired meantime to their room—

Mr. Chamberlain, associate counsel for the prosecution, moved that the plea of Hezekiah Porter be entered in the Amzi Rainey case, he not having been present Friday.

Porter was arraigned, and after reading the charges, the clerk asked: "How say you; are you guilty or not guilty?" The prisoner replied, "Guilty."

Mr. Chamberlain then said the district attorney was detained for a few moments, but had promised to be present shortly.

Mr Corbin returned, and said there was some delay in the returning of the bills by the grand jury, and he would ask a few moments further delay.

The grand jury returned in about ten minutes, and presented the following true bills: the United States vs. Robert Hayes Mitchell, Sylvanus Shearer, William Shearer, Hugh H. Shearer, James B. Shearer, Hugh Kell, Henry Warlich, James Neal, Addison Carrol, Miles Carrol, Eli Ross Stewart, alias Aley Stewart, Josiah Martin. They also returned true bills in the United States vs. John W. Mitchell, Joseph Mitchell, Thomas B. Whitesides, Meltin Watson, William Good, Robert McCreight, Newton Oament, — Neil, alias Bud Neil, Charles Byers, John Davis, Capers Scott, Harrod Neil. They also returned true bills against James William Avery, James Rufus Bratton, Chambers Brown, Alonzo Brown, Robert Riggins, Rufus McLain, Napoleon Miller, William Johnson, Pinckney Caldwell, Robert J. Caldwell, Robert Dixon Hyham, John S. Bratton, Harvey Gummy, Bascons Kennedy, Holbreck Good.

Mr. Corbin moved to enter a *nol. pros.* in the case of the United States against James Rufus Bratton and others, against whom a true bill was found week before last, the grand jury having presented other bills indicting the same parties.

Mr. Johnson. What was the original bill?  
Mr. Corbin. The original bill was against James Rufus Bratton and others, in which murder was charged, and in lieu of this I have presented to the grand jury two other bills, and they have brought them in; one charges murder and the other does not. I make the case of murder as agreed upon; that is the case of James William Avery. In that the first count is the same as in the original indictment.

Mr. Johnson. We want copies.  
Mr. Corbin. We will furnish you with copies in the Avery case. The grand jury also presented a bill against Robert Hayes Mitchell and others. We are ready to go on with this case, and are ready to proceed. It is the same as I presented the other day. The same parties that were indicted for murder; but we have omitted the murder counts in this case.

Mr. Johnson. We want to try the murder case now.

Mr. Corbin. There is no objection to going on with the case in which there is no murder charged.

Mr. Stanbery. It is contrary to the agreement.

Mr. Corbin. Not at all. The counsel has not understood me. There were thirty-one charges in the other indictment that was originally presented. We have taken fourteen out of it, and charge them with murder, as they were charged before. We have taken the other part of them

and charged them the same, leaving the murder counts out. We are ready, now, to go to trial upon that indictment.

Mr. Johnson. Which indictment?

Mr. Corbin. The indictment of the same parties, without the murder counts.

Mr. Stanbery. The agreement between counsels in the presence of the court is a matter which must be regarded, and the agreement yesterday was that the next case to be called should be the murder case, and we have made preparation for nothing else. To go on with another case would not only be a violation of the agreement, but it would be impossible for us to commence without further preparation.

Mr. Corbin. But if the counsel please, I will call up that murder case. I don't care which we try first.

Mr. Johnson. The murder case is the case we want.

Mr. Corbin. I will be as accommodating as I can.

Mr. Stanbery. We don't want accommodation, we want the agreement carried out.

Mr. Corbin. We are ready to proceed to trial in the murder case. Are you ready?

Mr. Stanbery. We are ready.

Mr. Johnson. Is that the indictment that we have a copy of?

Mr. Corbin. It is a new indictment.

Mr. Stanbery. How does it differ from the other?

Mr. Corbin. It is charged in one count that they did beat him because he voted. It is the same thing only charged in a different way.

Mr. Stanbery. We want a copy of this indictment, for murder is a very grave offense.

Mr. Corbin. The counsel insisted on having that case. Now I insist on going on.

Mr. Stanbery. The gentleman is wrong. The case he agreed to call up he has *nol. prosecuted*.

Mr. Corbin. But this case is against the same parties.

Judge Bond. You can have time to look at the indictment, and now we will go on with the other case.

Mr. Stanbery. Why if the court please, the agreement was to go on with the murder case.

Judge Bond. The agreement was that they would furnish you with an indictment charging murder in order that you might make your exceptions and take the case to the Supreme Court. The counsel has done that and you say you are not ready; you shall have such time as you require to look at that indictment. Now, there is no reason why we should not go on with another indictment.

Mr. Stanbery. The gentlemen did furnish us with a copy of an indictment containing the charge of murder. The gentleman spoke of that as the next case to come on.

The gentlemen has *nolle prosecuted* that case in which we were ready, and presents another containing some of the same counts and allegations. The counsel's agreement upon which this plea of not guilty was rendered, and your whole proceedings were entered into, was that the next case was to be a murder case; that the next case should be the murder case, and upon that case we were to make our point and not afterwards to try any case with regard to murder.

Judge Bond. He shall not try any case involving the charge of murder.

Mr. Stanbery. But first we want the murder case.

Judge Bond. He has brought you a murder case.

He has; and all we ask is simply a reasonable time to look at it.

Judge Bond. You shall have as much time as you want, but that need not prevent us from going on with any other case.

Mr. Johnson. I should like the attorney, may it please your honors, before deciding finally whether to take up the murder case or not, to tell us as briefly as he can, how the indictment upon which he proposes to go to trial differs from the indictment which he has disposed of to-day by *nolle prosecute*.

Mr. Chamberlain. If the court please, I will state as briefly as possible how this indictment is now drawn, wherein it differs from the original indictment, which contained a charge of murder. The court held the first count of the original bill good, but held the second count bad, and the second count was repeated in the third count with murder added. We have therefore omitted that bad count to which the murder count was added, and have added the murder count to the first count, which was held to be good; and those two, therefore, the first count precisely as it was before, and the first count with murder added constitute the second count with murder added. The court then held that the sixth count in the original indictment which I will now turn to, which charged that a conspiracy with in-

tent to injure, &c., Amzi Rainey, because of his free exercise of a right and privilege, &c., would have been good if it had been drawn with the particularity of the first count. We have therefore drawn a new count with the particularity added that is contained in the first count, and that constitutes a new count, based upon the decision of the court in the first indictment; and that count I will read with the permission of the court.

"And the jurors aforesaid, upon their oaths aforesaid, do further present, that James William Avery and others, together with divers other evil disposed persons, to the jurors aforesaid as yet unknown, late of York county, State of South Carolina, at York county, in said district, and within the jurisdiction of this court, on the 6th day of March, 1871, unlawfully did conspire together, with intent to injure, oppress, threaten and intimidate Jim Rainey, *alias* Jim Williams, a male citizen of the United States, of African descent, above the age of twenty-one years, qualified and entitled by law to vote at any election by the people in said county, district and State, because he, the said Jim Rainey, *alias* Jim Williams, did exercise the right and privilege of voting at an election by the people in said county, district and State, held on the third Wednesday of October, Anno Domini 1870, contrary to the act of Congress, in such case made and provided, and against the peace and dignity of the United States.

"That constitutes the whole indictment.

Mr. Johnson. Read the count that alleges murder.

Mr. Chamberlain. The count which contains the charge of murder, charges the parties named, James William Avery and others with a conspiracy to violate the first section of the act, and then, the jurors aforesaid upon their oaths aforesaid do further present, that James William Avery and others, late of York county, etc., did make an assault, &c., and the said James William Avery and others, a rope around the neck of the said Jim Williams *alias* Jim Rainey.

Mr. Johnson. Is that a copy of the other?

Mr. Chamberlain. It is.

Mr. Johnson. Well, you need not read it then.

Mr. Chamberlain. It is the same, only it does not contain so many names.

Mr. Stanbery. How does it conclude?

Mr. Chamberlain. Against the peace and dignity of South Carolina. It is the same, only we have attached to a good count instead of to a count which the court decided to be bad. There is also another count in which we charge that these conspired with intent to oppress, threaten and intimidate in order to prevent his free exercise, etc., to wit: the right to keep and bear arms, contrary to the act of Congress, and to that also is added the same charges. So that murder charge is repeated twice—it is in two counts.

Mr. Stanbery. I think if the court please, that we can make points; may send the case to the Supreme Court on that indictment.

Judge Bond. It will take you some time to do that.

Mr. Stanbery. A little time, yes sir, I have stated, if the court please, they only have to be the points upon which the certificate of division shall be certified; and will read them that the court may make any amendment that may be necessary.

Mr. Stanbery read a number of points on which the court were desired to certify a difference of opinion.

Mr. Corbin. I don't understand that there is any division of opinion except upon whether the murder can be tried in connection with the second count.

Judge Bryan. That is the understanding.

Mr. Stanbery. The court will send up such points as they consider proper to have the instructions of the Supreme Court upon.

Judge Bond. We seek no advisement upon these points; only on the murder counts.

Judge Bryan. We desire advisement in regard only to that. It is a question of very great consequence to the citizen and government.

Mr. Stanbery. As to the empanelling of jurors—that is a vital point.

Mr. Chamberlain. They expressly decided that you were entitled to ten peremptory challenges.

Mr. Stanbery. They have not agreed upon that opinion.

Judge Bryan. My brother would rather you would exercise the challenge than to have you go up on that question. My brother yields on that point.

Mr. Johnson. May it please your honors, I know that the court are not divided upon several of the questions which they are requested, by that statement, to divide upon, but that the division was only as announced upon the points which arose upon the third count, which

connected the offense of burglary with the principal offense of violating the other provisions of that act. I rise merely for the purpose of saying that, although the court were not divided at that time, upon any question, other than the one upon which they say now they were divided, I hope the court will keep the matter open, so as not to prevent us from asking the court to give us an opportunity to show that they ought to divide upon other points. If we can satisfy your honors, that there should be a division upon other points, the court, I am satisfied, would willingly divide upon such points, but as the case now stands, we are not advised that the court will divide upon any other question—will divide upon any other question than the question which arose upon the murder count. I only wish the court to understand now, that when we come into court we may think it our duty to urge the court to the propriety of dividing upon other questions. Whether we succeed or not, is a matter the court will dispose of hereafter.

Judge Bond. It is.

Mr. Stanbery. I suppose, if the court please, that by Monday we can be ready to present the point upon which you may certify the division, though I have already to your Honors the point, as I suppose it was; but whether it is satisfactorily stated, I am not well aware.

Judge Bond. I do not think you stated the point clearly.

Mr. Stanbery. Will your Honors allow us until Monday to state the point?

Judge Bond. Yes, sir.

Mr. Stanbery. If the court please, we have a matter to take up now, and we shall ask until Monday to get our witnesses, &c., and to prepare for this new indictment. We can occupy the court with a very important matter, with regard to the case disposed of yesterday.

Mr. Corbin. In arrest of judgment?

Mr. Johnson. To show what judgment should be pronounced.

Mr. Stanbery. Which section of the act shall apply?

Judge Bond. Are there any witnesses summoned in this case you now propose to try?

Mr. Stanbery. Certainly; we have a dozen.

Judge Bond. I mean for the defense.

Mr. Hart. I would state to your Honors, in answer to that question, that, until we see what names we included in the indictment, we perhaps cannot answer the question fully. Several witnesses have been summoned, but they are summoned for individuals charged in the indictment, and do not reach, perhaps, the merits of the indictment generally.

Mr. Johnson. As is stated by my colleague, may it please your honors, the question which we propose to discuss upon, the case which has been disposed of by a plea of guilty, is, what is to be the character of the judgment the court will pronounce upon that plea of guilty, whether it is to be a judgment only for a misdemeanor, and punishable by the lighter punishments provided for misdemeanors, or whether it is to be the punishment which the law provides shall be passed upon all who conspire in such a way. We think we can satisfy the court that the only judgment is the one which the law provides for the commission of what it calls a misdemeanor; that will take some time. If the court will permit us to go on now, and give us an opportunity of coming into court on Monday, prepared to defend ourselves against this new indictment.

Judge Bond. Mr. District Attorney, can you employ the grand jury to-day in finding indictments more rapidly than they have done?

Mr. Corbin. The grand jury have been delayed in finding bills, because both of the Attorneys have been detained in court to argue these preliminary questions. We can present, perhaps, twenty bills on Monday, if the court desire it. Another reason for delay, was that we did not wish to proceed in finding indictments while the indictments were under discussion before the court.

Mr. Johnson. (sotto voce.) We do not want any more found.

Mr. Corbin. You do not? Very well. Counsel on the other side do not complain, your honors.

The grand jury were here sent out, the District Attorney accompanying them; and after they had returned, Judge Bond informed Mr. Stanbery that the court was ready to hear his argument on the measure of punishment.



## ARGUMENT OF MR. STANBERRY.

The question which we now propose to discuss, may it please your honors, I regard as very material, for it relates to the measure of punishment which the statutes of the United States have provided for persons who are guilty of the offense to which these defendants have plead guilty. We claim that they are to be punished according to the provisions of the fourth section of the act of 1870; while the gentlemen who appear here for the United States claim that they are to be punished according to the provisions of the sixth section of this same act. A very important matter, certainly; for if the measure of punishment fixed for their offense is fixed by the fourth section, their offense is a misdemeanor punishable by a fine not less than five hundred dollars, and imprisonment not to exceed one year. While if the gentlemen are correct, and they are to be punished according to the provisions of the sixth section, their time of punishment may be extended to ten years instead of one, and to five thousand dollars; and more than that; they are to be—as an additional penalty attached to that section—divested, forever, of the privilege of holding any office of honor, trust or profit.

Mr. Chamberlain (interrupting.) You do not mean that the limitation of fine in that fourth section is five hundred dollars? That is the minimum—not less than five hundred.

Mr. Stanberry, continuing. Yes sir. You are right. The court sees that the question is one of very great importance to these defendants, and of very great concern and serious inquiry on all sides, in construing, and especially to the court in pronouncing judgment, under those acts. Now, our position is that the fourth section defines the offense of which we have pleaded "guilty" and fixes the measure of punishment. And that the sixth section has nothing whatever to do with any offense charged in this indictment.

Your honors will observe that we are now limited to the first count, and to the eleventh. Those are the only two counts left, all the others having been pronounced by the court, invalid and quashed, or abandoned by the District Attorney. I must add that as to the eleventh count, which purports to be under the act of 1871, I understand from the gentleman, that they now do not claim that this offense is provided for under that act, but that they limit themselves to section number six for punishment under that count, without any reference to the act of 1871.

Now I must ask your honors to give me your attention to a pretty full investigation of what is contained in this act of 1870; and I read the first section.

Counsel read in full section one of the enforcement act, of May 31st, 1870, and resumed.

Your honors will observe that this relates altogether to the right of suffrage; and when you refer to the title of the act which sometimes is looked to, you find it is "an act to enforce the rights of citizens of the United States to vote in the several States of this Union and for other purposes. The voting part of it was the one chiefly in view, and that first section is limited altogether to the suffrage right. The same is true as to the second section which imposes penalties upon officers who in the execution of their office prevent parties, otherwise entitled to vote, from doing some preliminary act, such as registration; or from acquiring the proper qualifications to become voters. It is, therefore, an official offense, and refers exclusively to the suffrage.

Then the third section provides for the case of the voter who has been excluded by official opposition from receiving a certificate of his qualification, when he was ready to show proper qualification, and upon affidavit of that matter he is to be allowed to vote at the election. Still this section relates to the right of suffrage, as the first and second do.

Up to this point, the legislation of Congress has made provision, first, for enjoyment of the right of suffrage under proper qualifications; secondly, against official misconduct in preventing the exercise of that right by a denial of the proper certificate; and, thirdly, by providing how the right may be exercised by the individual who has been thus, by official misconduct, prevented from obtaining the proper certificate.

Next comes the provision against individual interference with the suffrage. Now, what is the language of section 4?

"That if any person, by force, bribery, threats, intimi-

dation or other unlawful means, shall hinder, delay, prevent or obstruct, or shall combine and confederate with others to hinder, delay, prevent or obstruct, any citizen from doing any act required to be done to qualify him to vote, or from voting, at any election, as aforesaid," as stated in that first section, "such person shall, for every such offense, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered by an action on the case, with full costs and such allowance for counsel fees as the court shall deem just, and shall also, for every such offense, be guilty of a misdemeanor, and shall, on conviction thereof, be fined not less than five hundred dollars or be imprisoned not less than one month and not more than one year, or both, at the discretion of the court."

There is the section that protects the right of suffrage against individual interference; and it covers the whole case. It gives protection to the right and gives remedies for its obstruction, first, by action to the party injured, in the recovery of damages to himself; second, by public prosecution for the offense, giving exactly to the court the measure of punishment, in the way of fine and in the way of imprisonment, and giving to the offense the character of a misdemeanor, not of a felony.

I understand, my learned friends, that they have not indicted the defendant under this section, and do not propose to punish him under this section. Then they have not indicted him for any offense that he has committed. They say their indictment is founded upon the sixth section, and of course they must show that a penalty is given in that sixth section for the act charged.

Before I refer to the sixth section, I will call attention to section five:

SECTION 5. And be it further enacted, That if any person shall prevent, hinder, control, or intimidate, or shall attempt to prevent, hinder, control or intimidate, any person from exercising or in exercising the right of suffrage, to whom the right of suffrage is secured or guaranteed by the fifteenth amendment to the Constitution of the United States, by means of bribery, threats, or threats of depriving such person of employment or occupation, or of ejecting such person from rented house, lands, or other property, or by threats of refusing to renew leases or contracts for labor, or by threats of violence to himself or family, such person so offending shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be fined not less than five hundred dollars, or be imprisoned not less than one month and not more than one year, or both, at the discretion of the court.

Mark, if your honors please, it still has reference to the suffrage; still relates to an infraction of the right of suffrage; but refers to that right as guaranteed by the fifteenth amendment. In other respects it is like the fourth. But I suppose it is intended to cover the case in which Congress can properly legislate, and that is as to officers to be voted for who are Federal officers, as members of Congress and electors of President and Vice President; but, still, it relates to the suffrage, and is still a misdemeanor, although done by personal violence; although it is done by bribery; although it is effected by turning him out of his lease, refusing to renew his lease or contracts for labor. No matter how it is done, under that fifth section it is still punished merely as a misdemeanor, with precisely the same measure of punishment as in the fourth section; so it is to the defendants a matter of no consequence whether they be punished under the fourth or fifth sections.

Now, when we come to the sixth section what do we find? These words:

SECTION 6. And be it further enacted, That if two or more persons shall band or conspire together, or go in disguise upon the public highway, or upon the premises of another, with intent to violate any provision of this act, or to injure, oppress, threaten, or intimidate any citizen with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution or laws of the United States, or because of his having exercised the same, such persons shall be held guilty of felony, and on conviction thereof, shall be fined or imprisoned, or both, at the discretion of the court—the fine not to exceed five thousand dollars, and the imprisonment not to exceed ten years—and shall, moreover, be thereafter

ineligible to, and disabled from holding any office or place of honor, profit, or trust created by the Constitution or laws of the United States.

If your honors can find the word vote or suffrage in that section, it is what I have not been able to do. Here are some general rights, "immunities and privileges," but what were in contemplation of Congress is not stated here. And the very thing—the subject matter which, according to this indictment is to be punished, i. e., the exercise of the right of suffrage, is no where so much as mentioned in this section. The thing specially provided for in the five preceding sections, that is, the right of suffrage, is not at all mentioned here. This section must fall under that part of the title of the act which is "for other purposes;" that is, to secure other rights than the right to vote.

Now, to take up the indictment. The first count charges that these defendants ~~and conspirators~~ together to prevent ~~others~~ <sup>citizens</sup> of the United States, &c., ~~from exercising the right and privilege of voting, &c.~~

Now, if this is a good count at all, as your honors have said it is, if this is a good count at all, is it not a good count under the fourth section. It charges a conspiracy; it does the fourth section charges a conspiracy, it charges a conspiracy to hinder—

[The Associate Justice here made a gesture of dissent.]

Mr. Stanbery. Did I understand your honors not to admit that the fourth section charges a conspiracy.

Judge Bryan. The court does not understand to charge a conspiracy.

Mr. Stanbery. Will your honors let me call your attention to that; for if I am wrong in that I am wrong throughout in this case. Let us see if this charges a conspiracy. If this fourth section does not punish a conspiracy to prevent men from voting, I don't want for myself to take up another law book in my life. "If any person by force or bribery;" why that is not a conspiracy, for one person cannot be guilty of a conspiracy. But, "or shall combine and confederate with others," is not that a conspiracy?

Judge Bryan. It does not take cognizance of the conspiracy.

Mr. Stanbery. But punishes a person for a conspiracy.

Judge Bryan. It does not take cognizance of the conspiracy.

Mr. Stanbery. Undoubtedly, if the court please it does take cognizance of it, for it prohibits and punishes it. "Now if an individual is indicted under this clause what must be proved? Why, that he is a conspirator; that he is engaged in a conspiracy to prevent and hinder." Unquestionably twenty could be indicted under that section. You might indict all the parties in the conspiracy or you may indict one man for a conspiracy in which twenty were engaged, just as well as the twenty; for these wrongs are joint as well as several. That is the character of torts; they are not like contracts. When you come to trial you may elect to try one out of the twenty, and make his an individual case; and however, he might have violated the section in other respects, if you indict him as a conspirator, you must prove a conspiracy. That is perfectly clear.

Is not the measure of punishment, according to the judgment of Congress, fixed by this section, the one that must prevail for any such offense as this, whether committed by the person individually, or by him as one of a band of conspirators? Is that inevitable?

Why, no, say the gentleman; certainly, that is all very well, and if you indict him under that section, as a conspirator, or an individual, you can only punish him according to this lighter punishment; his offense is not a felony, it is only a misdemeanor. But, according to the gentleman, Congress changed its meaning, as to the degree of punishment for preventing a man from voting. They change their opinion when they come to the sixth section. They reconsider the matter provided for by the fourth section, and in the sixth section of the same act, they are of opinion that public policy requires that the thing denounced in the fourth section as being punishable as a misdemeanor, punishable by imprisonment, not exceeding one year, ought to be punished as a felony. They would make out that Congress had mistaken the offense when they called it a misdemeanor, as in the fourth section, and that when they came to the sixth section, they found it was a felony, and added nine years of imprisonment to the punishment that might be inflicted for the offense.

They would have us believe that Congress changed their ideas altogether, and found it necessary and proper to depart from what they had enacted in the fourth

section. We are, it seems, to leave the fourth section in the act for quite a new provision for the same thing, and a new punishment for the same thing. And yet they left it right there, to confuse every lawyer or judge who should be called upon to construe those sections, to ascertain what was the true measure of punishment to be meted out in case of interference with the right of suffrage. Congress meant no such thing and has provided for no such thing in this sixth section. Congress has here no reference to the suffrage question; it has reference to conspiracies against other rights and immunities—such as are mentioned in the sixteenth section of the same act.

The gentlemen may say, here are certain words which might embrace general privileges and immunities, and which might embrace the right of voting. What are they? They are not specified in the section.

Congress has not gone into particulars, and inasmuch as it was intended by this act to protect the voting privilege and other privileges besides, we say it was these other privileges or rights, wherever we find them in the provisions of this act, that are to be protected from a conspiracy by the sixth section. And what are these? They are privileges and immunities granted or secured by the constitution or laws of the United States, and by the sixteenth section of this act. Has not your honors already stated that that right has been secured by the laws of the United States?

Judge Bond. The right was not granted by the Constitution of the United States.

Mr. Stanbery. Has not your honor said that the right of voting was secured by the Constitution of the United States.

Mr. Corbin. He has not said it was not.

Mr. Stanbery. The right is secured by the State law, and the provision is made that all shall enjoy that privilege, without respect to race, color or previous condition. If your honor should say that this right embraces the right to vote from finding the words "secured or granted" what, I ask, are the rules of construction that prevent your honor from finding the prohibition there? Certainly it is not stated. It is made out by intentment if made out at all. The rule is this: that where a particular thing is provided for by act of Congress, or other legislative acts, and subsequently there is a general clause which does not name the thing, but which by intentment it might include, the clause is to be governed by the previous section that did embrace it; and is not that a sound rule of construction? Where there is a special thing provided for by the law, and when in the same law, or any subsequent laws, in which there is a general provision, in which that special thing is not mentioned, but which would embrace other things, and might possibly embrace that thing, and where the rule of punishment is given, where the special thing is mentioned, if that rule of punishment is given where the general provision is made, which, according to the laws of construction, is to prevail, the special, particular enactment, or the subsequent general clause or general law, which should embrace other things and might embrace this thing by intentment? Now, first of all, to go back a great way. I quote from 6th Coke's Reports, p. 19.

[Mr. Stanbery quoted from the authority referred to.]

If the former act provided a particular thing, but a subsequent act provided for, in more general terms, the latter statute leaves open the particular enactment, which is not repealed, abrogated, or interfered with by the general enactment. That is the rule, and is supported by many authorities.

Are we not precisely within the rule? Where you are looking for the particular thing, if this statute provides for many things, for voting, &c., and if you find this fourth section provides for the particular thing, and specifies the penalty and punishment for infringement, whether done by an individual or conspirator, or is a subject matter of conspiracy, you find that particular thing in that fourth section, where there is every word that is necessary to define the offense, and where the necessary punishment is specified for the offense, we find it called a misdemeanor, and nothing else.

It is that sort of misdemeanor where the right of civil action is given to the party to recover his damages, and then punishment afterwards to satisfy the public for the infringement of

that right. It is called a misdemeanor, and it is punished as such.

Now, what authorities could induce your honors to desert that very section made and provided by Congress for the particular thing, and for all branches of the particular thing, whether done by an individual or a conspirator, where the special offense is named and the punishment designated. How, I ask, can your honors leave that and come to the sixth section, which does not name this particular thing, and which only deals with general words to "rights secured," and so on? What is the offense of conspiring to obstruct a man in the exercise of voting? The very thing provided for in the fourth section. And there is the crime now changed from a misdemeanor to a felony, and the punishment changed to ten years from one.

Besides this, that the particular thing is not to be controlled by the general, there are other rules. One is that no construction is to be put upon a statute if it leads to an absurdity. Does not this construction which I have referred lead to an absurdity? They say this thing is provided for in the fourth section, and the conspirator is punished so and so, and in the next section but one, the same thing precisely, that of a conspiracy to interfere with the exercise of the franchise is also provided for, and the punishment is ten times as great, and is now called a felony, whereas in the former instance it was simply called a misdemeanor. Why the gentlemen must think that Congress did not know what they were about, to name an offense in the fourth section as a misdemeanor, and to name the same thing in the sixth section as a felony, and yet the position of the gentlemen leads to this absurdity.

You have no right to construe any section, so that its construction leads to an absurdity. You are not to suppose that legislatures meant to involve themselves in such an absurdity as the contradiction I refer to would involve them.

There is another rule of construction which prevails, which is this. Where you find direct repugnancy between one section and another, you must settle which you will adopt, and you must do this upon the most reasonable construction you can give. When you cannot fulfill every section of the law because one section says one thing and another exactly the contrary; when there is a direct repugnancy and you cannot make both prevail, the rule is you must make that prevail which is most reasonable *ut res magis valeat quam pereat*. If there is no repugnancy apparent between two sections of the law, or two clauses in the same section, then you are to give effect to both upon the proper subject matter which they are intended to provide for, as for instance where one section provides for a particular offense against the franchise, and another section provides for an offense against general privileges or immunities, not specifying voting privileges, and there are other privileges and immunities such as are stated in several of their counts, such for instance as enjoying personal liberty, protection from seizures, from which the Legislature intended to protect them, then there is no repugnance between the two sections, then you must carry them both out. You must not set one aside; you must give effect to all.

Now I agree that in that sixth section if it had provided a conspiracy to prevent the right of voting, why as a matter of course there would be a direct repugnance, and so if the fourth section had done the same thing, and the sixth recognized it, there would be a case of direct repugnance for them; it would not be possible to make both sections prevail by a rule of construction; but when by giving a construction to both sections, so that both will stand, you are avoiding a repugnance; but that does not happen to be the case.

No unreasonable construction must be put upon any law. Now consider it upon the ground of reasonableness, when Congress in that fourth section determines what shall be the measure of punishment for conspiring against the exercise of the right of suffrage, they say it is a misdemeanor, and punish it as a misdemeanor. Now according to the gentlemen when they came to consider the sixth section, they were after the same thing, and to punish the same thing; but according to the sixth section it is no longer a misdemeanor, but a felony, no longer punishable as a misdemeanor, but punishable as a felony with ten fold greater severity than it was to have been punished in a former section. Is that a reasonable construction? Would it not be infinitely more reasonable as to that particular interfer-

ence with the right of voting to refer it to that fourth section, and what is there provided? That would make the whole thing perfectly reasonable.

Again, this is a criminal statute. It is to be construed strictly, not with the latitude we sometimes observe in construing contracts between parties. It is to be construed strictly, and in favor of life, liberty, and the rights of the citizen. That is the rule in construing criminal statutes; they are not to be stretched by intentment. They are to be construed strictly because they involve penalties punishable with death, and the loss of liberty and property. According then to that rule of construing them strictly in favor of life and liberty, when you find this fourth section providing for an inferior punishment, and the sixth section providing for a higher degree of punishment, and when your case apparently, may certainly fall within the fourth section, and by intentment may fall within the sixth section, you are to be held to the strict construction, and can gain nothing by intentment where the other provision is plain. Is not that a sound rule for the construction of criminal law?

Will the gentlemen say that the sixth section, because it uses the words "conspire together," means anything else than the words used as the fourth section, where the words "combine," and "confederate" are employed?

I do not know whether the gentlemen will make use of that argument or not. They will not advise us. It perhaps did not occur to them that there was a change in the language, if it did they seem unwilling to commit themselves to any precise wording. What do we find in the fourth section? Do we find it provides for a different thing than conspiracy? but when we come to conspiracy, we find it is first provided for in the sixth section. It says "combine and confederate." In the second section it speaks of "two or more shall band or conspire together." Now is there any difference? Now we have in the English language such a thing as words of synonymous meaning, where different words are used to express the same ideas, and I suppose I shall have to go to a dictionary to show that either clause resolves itself into the other if the government is to turn so critical and grammatical in their argument. Now what is the definition that Webster gives of the word combinations. "Intimate union or association of two or more persons of things by act, purpose or agreement for entering some object by joint operation; in a good sense when the object is laudable; in an ill sense when it is illegal or iniquitous when the word stands by itself it is commonly taken in a bad sense, as combinations have been formed among the people. It is sometimes equivalent to league or to conspiracy we say a combination of men to overthrow the government, or a combination to resist tyranny, another meaning is close union in connection." He defines "conspiracy," a combination of men for an evil purpose; an agreement between two or more persons to commit some crime in concert; particularly a combination to commit treason, or excite sedition or insurrection, against the government of a State; a plot; as a conspiracy against the life of a King—a conspiracy against the government."

What is confederation for an evil purpose but combination and conspiracy? We are taught to look at the essence of a thing, not to every particular word; we are not to attempt to expound an act by a critical or grammatical construction of single words, but rather by the essence and substance of the thing. Very bad grammar may sometimes be found in the wording of an act, but it is not regarded in the construction of the statute. An improper word may be used, but the meaning may be all right; the law does not regard it where the intention is perfectly clear.

Now, will the gentlemen say that this indictment alleges that the parties combine and confederate together to prevent the exercise of the right of suffrage if they did not mean a conspiracy? It means that they have agreed, confederated, and combined to do a certain thing. Not did it, but to do it; that is, they intended to do it. They combine and confederate together to prevent a man from voting; in other words, they conspire together. Is it not the same thing? Can you find a different offense in it? Does not the same agreement make a combination as well as a conspiracy? Is not the definition given in the books that a conspiracy is nothing but a combination? If conspiracy then is combination, combination is conspiracy. The words resolve

themselves into one another, and are evidently intended to be synonymous.

I think I take a very weak view of the case, if for a moment I entertain the idea that such an argument is to have any weight with your honors, and that you are going to look for the shadow instead of the substance. What I say is, that for all confederations, combinations or conspiracy, to interfere with the exercise of the franchise, the fourth section provides the rule and no other, and that combinations or conspiracies provided for in the sixth section must relate to other rights than those of the franchise or of voting.

I now wish to direct your honors' attention to the eleventh count in the indictment. [The counsel here read it.] In both the first and the eleventh counts it is interfering with the right of suffrage. This purports to be under the act of 1871, and the counsel, I understand, have agreed to try them under that act.

Mr. Corbin. No; we have not.

Mr. Stanbery. Do you rely upon the act of 1871?

Mr. Corbin. Certainly; they are guilty under the act of 1871. We have agreed that the conspiracy was on the 22d of March, while the act of 1871 was not passed until April. But while we set up that the whipping of Amzi Rainey took place on the 22d of March, we insist that the men who did it were in a general conspiracy; that it was an organization in which they continued in the conspiracy after the act was passed.

Mr. Stanbery. You mean that a conspiracy was formed and that the overt act was committed before; that no new conspiracy was formed, but that the old one was in operation.

I will now read so much of the second section of the act of 1871 as relates to this matter.

Mr. Stanbery here read from that section.

It is agreed that a conspiracy to which these persons plead guilty was formed before this act took place, and that the overt act was committed nineteen or twenty days before the act of 1871 was passed. But, say the gentlemen, this act punishes a conspiracy entered into before and reaches these men, who are charged as having entered into the conspiracy, for an overt act done by them, as well as punishing subsequent offenses under it, and this under the idea that the conspiracy is a continuing thing. Certainly it does not continue after the conspiracy is accomplished, and that was performed or accomplished before the passage of this law. It must have been in the election of October, 1870, that the offense is having interfered with that privilege. Now, is the character of a conspiracy that of a continuing thing? Suppose it is a continuing thing, what conspiracy are you indicting him for? Is he a conspirator every day? May you take any day in which he is a conspirator and say prior to the time that he entered into the conspiracy that he was a conspirator? What is the rule of law? That the conspiracy is perfect. The crime is committed the moment the conspiracy is entered into, unless it is a conspiracy which can only be made out by some overt act. Is not that the law of conspiracy which makes it an unlawful crime and which makes an offense simply upon the fact of the agreement? The agreement itself makes the conspiracy and the crime, and the party can be indicted at once. It was perfect when the conspiracy was formed.

Now, in this case the conspiracy was formed before this act went into effect. The parties were liable to prosecution for the conspiracy, formed before that time. Did they enter into any new conspiracy, in any violation of the provisions of this act? That is the question: not merely did they continue the old conspiracy; that is not the question, but did they enter into a new one? The gentlemen do not propose to say that; they say there is but one conspiracy, but there is a continuance. It is the same old conspiracy not yet accomplished, not yet ended. But does that bring us under the act of 1871. The act of 1871 is prospective, not against crimes that have already been committed, conspiracies already formed, but for conspiracies that should be there after formed. It is clearly so by the language I have quoted, "that if two or more persons in the United States shall conspire," not shall have conspired. They must come together after this law and enter into an original conspiracy, before they come within the operation of this law. It is not for persons who have conspired before, that is provided for in this law. This law, according to the gentlemen's construction, must have a retrospective operation to those it upon these persons. The conspiracy was in March, 1871. It is provided for by the act of 1870. The act of 1871 looks

to the future. It is for those parties who shall, from this date conspire, who shall now begin to conspire; they are to be punished in the mode provided for in this act. Is that not perfectly clear? I think your honors are bound to give it such a construction.

To punish these men by an act passed after the commission of the offense, is to introduce a new kind of punishment; that would make it an *ex post facto* law. It is a rule with *ex post facto* laws, that they provide that what was innocent before shall be made a crime afterwards. If it provides that an act, that before was misdemeanor shall now be felony, that is *ex post facto*; or when applied to a former act, making that a crime which was before innocent. How cruel it would be to these men who entered into this matter, under the supposition that it was provided for in a previous law, by which they could not be punished beyond a year, and were willing to take the consequences, if the legislature should subsequently say that the crime you have committed shall be punished by ten years imprisonment. It is no new conspiracy, no new crime. They have not conspired again. It is still the old offense that they have committed, and under the old law, and long before the new law was passed, and now you take them out of the punishments of the old law, and provide for a conspiracy by a new law made after the act was committed. Now I do not know what the gentlemen mean by a continuous conspiracy, so as to make it out a new conspiracy. I know there are certain things that are included in the term continuity, as, for instance, in a case of larceny, if the offense is committed in one county, and the goods are carried into another, according to English law, the thief may be indicted not merely in the county where the offense was committed, but in that to which he brings the stolen goods, and, as applied to our own domestic institutions, if a party stole a horse in South Carolina, and rode him into North Carolina, why, I suppose, he could go into North Carolina and indict the man for stealing that horse; that is continuity, and the act of stealing makes him criminal in the second jurisdiction. In that case the party is still engaged in a crime, and except in an instance of that kind I should like the gentlemen to find me an instance of crime by a continuity.

We know a nuisance may be recovered against, not only at the time the nuisance was committed. If the nuisance is still continuous, the party may be indicted for the continuance of the nuisance as well as for the nuisance originally committed. To apply such a rule as that to this case, where a conspiracy is formed under the old law and then a new law comes up which says if you are guilty of the old conspiracy, you shall be punished under the law, I take it your Honors will wait until there is a new conspiracy. If you do not, you punish him under the old law for the original conspiracy and under the new law for the continuation of the conspiracy. You punish him twice for the same thing.

In any point of view in which I am able to look at this section of the law, your Honors have but one thing to direct you, and that is to sentence these parties under the fourth section. They have broken no other law, and they have acknowledged themselves guilty of the one they have broken, and I ask your Honors that the penalties of the previous statute, which makes the crime a misdemeanor, be applied. How is it possible, under the circumstances, that your Honors can condemn these men to imprisonment for a longer period than that section of the act fixes? Are your Honors satisfied that you can do it? It is a most important thing to deal with human liberty. It is a matter that should be pursued with extreme caution. The Judge is bound to conform to the law, but he must take great care which law he is bound to perform and be careful that he does not mete out punishment provided for by another law or punish an individual for an act provided for by one section by a measure of punishment far greater than that provided for by another.

For these reasons your honors, I claim that the only judgment that can be pronounced upon these men, is that provided for in that act.

Mr. Corbin. Said his associate suggested, and he agreed with him, that it might be well to take time to examine the authorities upon the point which had been so elaborately discussed by the learned gentlemen

he thought there was a short and conclusive to the gentleman's argument, but not knowing the fine points of the counsel might strike the court, he thought it well to ask a little delay to prepare for a reply. If, however, the court desired him to proceed, he would comply with the wishes of the court. The court granted time, and adjourned until Monday at 11 o'clock A. M.

The reported remarks of Judge Bryan, on modified and unmodified common law, with respect to the right of peremptory challenge, which some repetition employed in the remarks by him made somewhat obscure, will be indicated by the following quotation from a decision of Chief Justice Taney, and to which Judge Bryan's remarks had reference:

"Neither of these acts [1789, 1790,] make any express provision concerning the mode of conducting the trial after the jury are sworn. They do not prescribe any rule by which it is to be conducted, nor the testimony by which the guilt or innocence of the party is to be determined. Yet, as the courts of the United States were then organized and clothed with jurisdiction in criminal cases, it is obvious that some certain and established rule upon this subject was necessary to enable the courts to administer the criminal jurisprudence of the United States, and it is equally obvious, that it must have been the intention of Congress to refer them to some known and established rule, which was supposed to be so familiar and well understood in the trial by the jury that legislation upon the subject would be deemed superfluous. This is necessarily to be implied from what these acts of Congress omit, as well as from what they contain.

"But this could not be the common law as it existed at the time of the emigration of the colonists, for the constitution had carefully abrogated one of the most important provisions in relation to testimony which the accused might offer. It could not be the rule which at that time prevailed in England, for England was then a foreign country, and her laws foreign laws; and the only rule upon the subject which can be supposed to have been in the minds of the men who framed these acts of Congress, was that which was then in force in the respective States, and which they were accustomed to see in daily and familiar practice in the State courts. And this view of the subject is confirmed by the provisions of the act of 1789, which refer its courts and officers to the laws of the respective States, for the qualification of jurors and the mode of selecting them. And as the courts of the United States were in these respects to be governed by the laws of the several States, it would seem necessarily to follow that the same principles were to prevail throughout the trial; and that they were to be governed in like manner in the ulterior proceedings after the jury was sworn, where there was no law of Congress to the contrary.

The courts of the United States have uniformly acted upon this construction of these acts of Congress, and it has been sanctioned by a practice of sixty years."—*U. S. vs. Reid*, 13 Howard, p. 185.

## TENTH DAY'S PROCEEDINGS, DEC. 11.

The court met at 11 A. M., Circuit Judge Hugh L. Bond presiding, District Judge Geo. S. Bryan assistant justice.

Mr. Stanbery, in addition to his argument delivered on Saturday, called the attention of the court to two additional authorities, and spoke as follows:

May it please your Honors: I wish to call to the notice of the court two authorities upon the point as to phraseology—the change of phraseology between the 4th and 6th section, "Wharton's Criminal Law, Vol. 1, page 377. But wherever there is a change of phraseology, and a word not in the statute is substituted in the indictment for one that is, and the word that is substituted is equivalent for the word used in the statute, or is of more extensive significance, the indictment will be sufficient." There are undoubtedly exceptions to this rule where a word is used in a statute which has a technical meaning that no other word has, as for in-

stance, "kill and murder"—there is no equivalent for that; "burglariously"—there is no equivalent for that; "ravish"—there is no equivalent for that; but for conspiracy there is no such rule. On the contrary, if the court please, here is a precedent. Here Wharton gives precedence for a kind of conspiracies, and now what is the first precedent—a murder. "That A. B., late, etc., and C. D., late, etc., being persons of evil minds and dispositions, together with divers others evil disposed persons, etc., wickedly, etc., violently, maliciously and unlawfully did conspire, band, confederate, and agree together"—band, conspire, confederate, and agree together—all equivalent words; that is on page 607, and the same language occurs under the head of conspiracy. There are a great many given, but I think your honors will find that about the same language that confide and confederate are just as appropriate and equivalent words for an offense as conspiracy.

Mr. Chamberlain. May it please your honors, we listened, on Saturday, to a very grave and extended argument, upon the measure of punishment to be applied to these prisoners who have pleaded guilty. Representing the Government, we do not think that we should fully discharge our duty, if we did not give a careful consideration to this argument, and I may add, that we also felt that we should hardly pay a proper respect to so distinguished counsel as those who represent the defendants in this instance, if we did not give such a consideration to the argument so seriously and elaborately presented to the court. We have considered, to the best of our ability, the scope and force of that argument, and are prepared to say all that we have to say in a very few remarks, this morning, and I certainly do not think it would be becoming in us to detain the time of this court with any argument beyond what the case seemed absolutely to call for. Our position is, that this question has been virtually and really settled by the decision of the court, upon the motion to quash this indictment. The court, upon a motion to quash the first count, in this indictment, have held it to be good, for reasons which I desire now to call the attention of the court. The first section—I read now from your honor's opinion.

"The first section of the act declares a right. It is referred to in this count by its number, and with sufficient certainty, it seems to us, to enable the parties charged, after trial, to plead the verdict rendered in this case, in bar of another indictment. After declaring the right, the statute proceeds in section seven to define the punishment for its violation. It is not necessary, it seems to us, that each section of the act should contain or disclose the penalty for its infraction; that is often in this statute referred to a later and generally to the closing section of the act defining the crime or offense, and is made applicable to all the antecedent sections."

The court now have decided in the words that I have read, that this count, charging a violation of the provisions of the first section of this act, is good, because, while the first section declares a right, the sixth section makes the infraction of that right a crime, and affixes a penalty for it. Now, how is it, if your honors please, that in that view of this case it can any longer be a question what section affixes the punishment for this offense. The court have said, distinctly, that because the offense and its punishment are declared in the sixth section, that, therefore, this count is good, although the right is declared in the first section of the act. And now, the claim is gravely made, that, although we can indict under the sixth section for a violation of the first section, that after we have indicted and convicted, then the court must go back, away from the sixth section, under which we have indicted, and which section defines the offense, and seek in section iv, for the measure of punishment.

We cannot feel for a moment that argument is necessary to be addressed to this court after pronouncing this opinion upon this point. All we have to say is that if the court are right in holding that this indictment can be drawn for a violation of the first section or the sixth section we have only to show what penalty the sixth section prescribes for a violation of the provisions of the act.

We have a word more, if your honors please, and that is, if any argument is necessary nothing is clearer than that under the proper rules of the construction of a statute, if this court had not already decided the point, that these sections of this statute are all harmonious, and that each of them as to its object, which object is distinguishable and to a certain extent supported from every other section. Under this view the fourth section of the act is evidently designed, as your honor, the D'



strict Judge, intimated during the argument of the distinguished counsel—that the fourth section was aimed at an individual offense—while we are not. We do not care to dispute that under that section we might have possibly indicted for a conspiracy, that the intent of that section is evidently to punish any person who shall commit these acts, and it is not until you arrive at the sixth section that you have any language. I mean an exact phraseology, which covers the combining of two or more persons with intent to violate the provisions of this act, but that the highest rule of construction, I may say, which requires the court to give force and effect to every part of a statute, would surely give to this count that interpretation. Those fourth and fifth sections were intended to bear against an individual who should commit the offense therein named, while the sixth section was added to cover broadly a conspiracy of two or more persons to violate any provisions of the act. So that we say that if your honors had not already practically decided this in deciding that we had a right to use the sixth section, we could easily follow the argument of the distinguished counsel, and show a mandamus that such was the purpose of the act. The fourth and fifth sections were aimed at the individual offense, and the sixth section at a conspiracy. That is all, if your honors please, we have to say on that point.

We now come to the question with reference to the eleventh count. Whatever argument might have been urged under other circumstances, these prisoners have pleaded guilty to the eleventh count, as it originally stood. If we now, if your honors please, is it in the power of these prisoners to claim that they are not punishable under this section when they have pleaded guilty and said that they did commit the offense, in form and manner, as set forth in this count? Under other circumstances and in the cases to follow, we are aware that this question might be raised, but all we have to say upon this count of the indictment, and the measure of punishment applicable to it, is that these parties have pleaded guilty, and the question is foreclosed and they are estopped from denying what this count ought to punish them for, an offense which they have said they are guilty of committing.

Mr. Johnson (*sotto voce*). Do you want to say anything, Mr. Corbin.

Mr. Corbin. No, sir. It is too small a question for me to take upon.

Mr. Johnson. May it please your honors, on the motion which we made to quash this indictment the court has decided that six of the counts were bad, and have divided upon the question whether three of the other counts are good or bad. The result of that decision is to leave before your honors now the first and the eleventh counts, and the question upon which you are asked to pass your judgment is, what punishment shall be awarded for the offense described in the first count, and then whether any punishment can be awarded for the offense described in the eleventh count. Mr. Attorney-General, and in that I suppose the District Attorney concurs, seems to suppose that the question in relation to the first count has already been decided by your honors. Our answer to that is, that it was not made, that it would be extraordinary if a decision upon a question, not raised on either side and not necessary to be raised at that state of the indictment, should be considered as conclusive. When the court's attention is brought to the particular objection it has now before it—

Mr. Chamberlain. I said virtually decide.

Mr. Johnson. I suppose a virtual decision is a decision. A decision that is not virtual is no decision. Still he relies upon it as a decision; now my friend says that what he meant was a virtual decision. I cannot catch the distinction. If he relies upon it as a decision, then the court is called upon, whether they have decided it either literally or virtually. If they have made a decision either literally or virtually upon that decision, and they do not desire to hear an argument upon any ground that they had considered a particular question, then neither my friend or myself have any desire to occupy the time of the court.

But I don't consider, may it please your honors, that you have decided it at all; now, suppose it to be *res integra*, and for the first time brought to the attention of the court, the question is what judgment are you authorized to pronounce against the parties who have plead guilty to the first count. That is the question of not only serious import, perhaps, to the parties, but of serious interest to the court. The court must be as desirous to ascertain what judgment they are authorized to pronounce, as the parties or

their counsel are desirous of having the judgment pronounced. Your honors are to be held guilty of the abuse of the law, if it is provided for in your award a judgment which the law I think you authorize. And as you are incapable of making intentionally such judgment, you must be of course, desirous to know what judgment it is that the law gives you authority to pronounce. I shall occupy, your honors, for a very brief period, in discussing that and the question which arises upon the 11th count. The first section of the act of 1870, merely defines the right of the citizen, and nothing else. If the indictment had been framed alone upon that section, or to speak more accurately, if there had not been other sections in the same act, I suppose the Attorneys for the United States would hardly contend that any judgment could have been awarded. It provides for no penalty there, pecuniary or personal. It merely says that the parties described in that section, shall have the right which that section describes, and that is all.

Well now, your honors have decided that notwithstanding this character, of the first section, the first count in this indictment will stand good, because the counsel for the United States have a right to refer to some other section in this act, to show that the law does provide as a punishment for the violation of the right, granted by the first section.

That we admit now, that your honors have decided.

But then the question presents itself, what other section can be resorted to for the purpose of ascertaining what judgment is to be pronounced against him who violates the first section. That is against him who violates the rights secured to him by the first section.

We say it is the punishment described by the fourth section. Counsel for the Government may maintain that it is the punishment provided by the sixth section. Which is right? Is it not the proposition upon which your honors are called upon to decide. I understood Mr. Attorney-General with that clearness which has characterized his efforts throughout this case, as admitting that they might have indicted under the fourth section. Might have indicted for what? Might have indicted for the perpetration of offense charged in the count. What is that?

Mr. Chamberlain. I know that the counsel desires to state correctly in all respects. I do not admit that we might have indicted under the fourth section. I simply said that even if we could have indicted under the fourth section, we still had the same right to indict under the sixth section.

Mr. Johnson. I certainly do not mean to misrepresent the Attorney-General; but I certainly understood him, and that it was possible that they might have under the fourth section. But whether he admitted it or not, could not an indictment have been framed under the fourth section? and when we have ascertained that the court will have to decide whether the punishment can be awarded for the same offense as that punishment as prescribed by the sixth section. Now I do not understand the learned counsel for the government as admitting, as I supposed him to have admitted, that an indictment could have been framed for a violation of the right under the provisions of the fourth section. The fourth section looks to the perpetration of two offenses or rather to the same offense, or rather of the same offense by an individual and by an individual in combination with others. If the latter part of that section was not in the section, but provided simply against an individual wrong doer, against him who should violate the first section, we might admit that there was no inconsistency between that section and the sixth section.

But if, under the fourth section, the offense charged in this indictment could have been charged, then it is for the court to hold whether, looking at the object of that section and the subsequent sixth section, the government are not bound to indict under that section. Well, could it not then have been framed under the fourth section? Why not? Our learned brothers suppose and they rendered it necessary for my colleague in advance to cite authorities for the purpose of showing what is the meaning of the terms to be found in that section and what is the meaning of the terms to be found in the sixth section. They maintain that what the fourth section does is to punish an individual



agrees. Why, that is true if the individual is so. Nobody could be punished but him for the offense stated under the fourth section. But if, pursuant to the language of the fourth section, they charge that he combined with others, or confederated with others, and himself with others to perpetrate an offense under the first section, then he would sustain the charge, or does sustain the charge, that a confederation or combination of banding together. What is that but a conspiracy? Is it not a conspiracy, if men shall go together and agree to act in concert for the purpose of accomplishing an illegal end? Who can doubt that? Is it for a moment be reasonably argued, and I mean with no disrespect, that he who combines, he who confederates, he who bands himself with others to do an end prohibited—an end illegal and liable to be punished—is not a conspiracy? Why, what do you do under such an indictment as is now before you, framed under the sixth section?

Are you going to punish these parties. Don't you punish them individually; have you not permitted them to sever in their defense, and what is the meaning of the plea of guilty, which each of them has filed, as to the charge against himself individually? It is, that he did combine, confederate, and band with others, that he did conspire; but upon trying him severally, you punish him individually. You do not punish the others, who are alleged to have been parties to the conspiracy, they are to be punished only when they are before the Court for trial, so that each one in an indictment for conspiracy, there the right to sever themselves exists; and your Honors have held that it exists in this case, so that each one stands before you precisely as he would have stood; if none but himself had been indicted for conspiracy to violate the first section. There is a logical astuteness that I cannot exactly grasp. It is left to the young men. My mind is too blunted to see it. Age is withered.

Mr. Corbin, *sotto voce*. Lost your eye sight.

Mr. Johnson. Perhaps, (I wish the reporters to put that in.) I want to exclude a conclusion. They say that, conspiracy means conspiracy. Well that I don't deny, but what is conspiracy? What do the books tell us. Agreeing, banding together, non-confederating and combining to do an illegal act. That is conspiracy, and if that is conspiracy, if that is the very definition of the term conspiracy, if that is all that is necessary to be proved against the party, for the offense of conspiracy, I should like to know? By what subtlety of ratiocination the learned counsel on the other side can succeed in showing that he who is indicted for a conspiracy, could not be convicted for it, if it was proved that he had combined, confederated and banded himself together with others. Oh, no, says the learned counsel, conspiracy is combination, but combination is not conspiracy. Conspiracy is confederation, but confederation is not conspiracy. Well, if conspiracy is not confederacy or combination, what in the name of common sense is it; has it any meaning? Look to the definition of the offense and you will find it consists of confederation and combination; the very essence of the offense of conspiracy is that the defendant is charged with it to be guilty by proof, of a fact that he combined and confederated with others to do the act charged, and is to be convicted. Well, if he can be convicted by proof, of the elements, so to speak, of the term of such conspiracy is composed, why cannot he be indicted for conspiracy under the fourth section, provided the terms combine and confederate and band together are to be found in this section. Then your honors have to look to that section which first punishes an individual offender for the act done by him individually. It next charges him, and punishes him for combining and confederating with others to do the illegal act. Well, if confederation and combination establishes con-

spiracy, then proof of the conspiracy or the allegation, involves alone the injury did the party charged to be guilty of the conspiracy, combine and confederate.

I think it clear then, may I please your Honors, without further taxing your time, that the offense under this sixth count, in connection with the first, might have been charged in the fourth count. Suppose the act might be charged under the sixth as far as the words are concerned, but it will hardly be maintained by counsel for the government. It would be aspersing the intelligence of Congress to suppose—it would be libelling their sense of duty—that they intended to leave to the prosecution to select whether they would punish the same act as a misdemeanor or as a felony. When by the 4th section they made it a misdemeanor, did they intend by the 6th section or any other section in the act, to make the same offense or any other a felony, so as to give to the counsel for the government the privilege of choosing under which of these sections they would frame their indictment, leaving to them to decide whether a citizen of the United States is to be held guilty of a felonious offense instead of being held responsible for a felony? Why, it seems to me the question offers its own answer. Well now, supposing, may it please your Honors, that they could not appropriate the 6th section or give effect to the 6th section in any other way, as far as that part of the 4th section is concerned, to substitute it for the 4th section, your honors, I think, would be bound to conclude that as they did not know, could not tell, under which of these sections the government intended to punish the offense, that you will take the lesser punishment which the law provides for the same offense. Even then, if it were true that no application of the sixth section could be made which does not cover the ground embraced in the fourth section, your honors, I think, would feel yourselves at liberty and bound in pronouncing your judgment for the offense to punish it under the fourth section. But it is not true, may it please your honors, that the sixth section has no application at all broader than is included in the fourth section. There are a variety of rights.

Your honors will look at the sixteenth section of this same statute. A variety of rights with which the citizen is amply furnished, other parts of that statute; a variety of United States property, which may be violated by a case of Baron, Baltimore, and looking, therefore, to the Congress of the United States, and looking to the Maryland, as the parties who submit to the subsequent of that State, from appropriating a section to your honorable use. Now if there is any right which was left or in any law, common or uncommon, relation unmodified, one would suppose it would be alone; who enjoy his own property, without the invasion to the public, except it should become necessary to the public use, and then only upon a limited basis. But the Supreme Court decided me, it is true, that although it was a right and right in the independent of statutory regulation or enacted law; although it was a right, the provisions of enactments of the United States, which the counsel so, these never claimed, supposed protected him in the absence of that right, did not apply, because these provisions of the constitution of the United States upon which they relied, were provisions restrictive of the four of Congress.

My brother tells us that the right to bear arms is that of the citizen. Where did he get the right to bear arms more than to be guaranteed against unlawful seizures or against the appropriation of his property to public use without compensation? That does the constitution of the United States say about bearing arms? Nothing. What does the fourteenth amendment say upon the same subject? Nothing. The latter is as silent upon the topic as the former, and if the former cause for silence does not cover such a case as this, the latter for the same reason does not embrace it.

Now, my brother imagines a case, which shows that he must give loose to his imagination to support the law. That is a very bad support of the law; for his imagination, and any man's imagination, would generally go beyond the law. He imagines, or supposes, two militia companies are authorized to bear arms, and the arms are placed in their hands, I suppose, by this government—not by the United States—they had a right, says the learned attorney, to hold on to their arms. So they had, as against the Governor or the government, so long as he permitted them to hold

the conspiracy was on the 22d of March, 1871; that is before the law was passed—the very act I mean—that was before the law was passed. Well, now, standing there, may it please your honors, a lawyer and everybody else would say at once, then the law is invalid, because it is *ex post facto*. There was no criminality in that act—recognized, I mean, by any law of the statute books or anywhere else.

It may have been wrong an outrage upon an individual man, but it was no offense against the peace and dignity of the government of the United States, since the government, neither in their desire to preserve its peace, government and dignity, did not make it an offense until a month after the alleged offense was committed. How are you going to punish that? Oh, say my brothers, you are to punish it. Because conspiracy is always a continuing act. Then, I suppose, it goes on still. I suppose, therefore, that any man who is alleged to have been initiated into the conspiracy two years ago, or one year ago, or ten years ago, might be punished now and punished at all times. Once a criminal, he is forever a criminal; once combined to prevent a man from voting, or to punish him on having voted, although he never attempted to oppose his right to vote, or never punished him for having voted, he may, at any time that Mr. District Attorney thinks proper, call upon him and punish him, upon the ground that the conspiracy lives on, although the object of the conspiracy is at an end—a conspiracy without an object. My friends will pardon me for saying it is an absurdity. A conspiracy to effect some object not criminal is equally absurd. There then can be no conspiracy which the law can punish, except as a conspiracy, existing at the time the indictment is found, for the purpose of accomplishing some illegal end. Now, the individual act, which is that of having inflicted a beating, an assault and battery upon this man, for his support of Wallace, in 1870. The time's past, the end is accomplished. My brothers say that it is true the time is passed; nothing can be done injurious to the public because the conspiracy has expired—but still the man has a right to drag him before a court of criminal jurisdiction, and punish him because once in his life time he was found combining, conspiring and conspiring with others to do an illegal act. Can that doctrine, may it please your honors, of constructive treason, which so long dishonored England, which came so near bringing to the block the patriots of the day in that kingdom, except for the support of the intelligent and brave men of England aided by the burning eloquence of the counts who figured and won immortal fame—the question whether a man who had been charged—good or bad. The result of ractice in courts of justice before your honors now the constructive treason counts, and the question upon any writ—asked to pass your judgment is, what punishment shall be awarded for the offense described in the looked count, and then whether any punishment, labelled awarded for the offense described in the other count. Mr. Attorney-General, and in that I asked as the District Attorney concurs, seems to support the question in relation to the first count has also not been decided by your honors. Our answer to that, that it was not made, that it would be extraordinary if a decision upon a question, not raised on either side and not necessary to be raised at that state of the indictment, should be considered as conclusive. Will not the court's attention be brought to the particular objection it has now before it—

Mr. Chamberlain. I said virtually decide.

Mr. Jo. I suppose a virtual decision is a decision. A decision that is not virtual is no decision. Still he relies upon it as a decision; now my friend says that what he meant was a virtual decision. I cannot catch the distinction. If he relies upon it as a decision, then the court is called upon, whether they have decided it either literally or virtually. If they have made a decision either literally or virtually upon that decision, and they do not desire to hear an argument upon any ground that they had considered a particular question, then neither my friend or myself have any desire to occupy the time of the court.

But I don't consider, may it please your honors, that you have decided it at all; now, suppose it to be *res integra*, and for the first time brought to the attention of the court, the question is what judgment are you authorized to pronounce against the parties who have plead guilty to the first count. That is the question of not only serious import, perhaps, to the parties, but of serious interest to the court. The court must be as desirous to ascertain what judgment they are authorized to pronounce, as the parties or

Mr. Corbin. We are ready to proceed in the case of James William Avery.

Mr. Stanbery. If the court please, the District Attorney says he is ready to proceed in the murder case I have filed a motion to quash the counts in the indictment which charged murder, in addition to the other matters; these are points upon which the court agreed to divide. I believe it was understood that the court would not have any more argument upon the point.

Mr. Corbin. Do we understand the court that upon those counts, the second and fourth, the court is divided in opinion, and will certify that difference to the Supreme Court and trust in the meantime the trial will be stayed?

Judge Bond. Yes, sir.

Mr. Corbin. If the court please, we are ready to proceed in the case of United States against Robert Hayes, Mitchell and others. The clerk will empanel the jury.

Mr. Johnson. Wait until we have seen the indictment; you hurry up the indictment too quick.

Mr. Corbin. It is high time somebody should hurry up here.

Mr. Johnson. I think so too, when you were out of court for an hour yesterday. Is there any other felony charged then.

Mr. Corbin. Oh, certainly; but no other [felony, no felony against the State laws.

Mr. Stanbery [looking at the indictment]. The second count has already been declared bad, by your honors. [To Mr. Corbin] Do you want to put me to the necessity of filing another motion to quash that count?

Mr. Corbin. I have never heard a motion on that subject.

Mr. Stanbery. But you have on that subject in the other case.

Mr. Corbin. No, sir—the question has not been raised at all—it is right to keep and bear arms. There was no such allegation in any indictment before the court.

Judge Bryan. I think not.

Mr. Corbin. You are thinking of unreasonable searches and seizures.

Mr. Stanbery. And you think the right to keep and bear arms is secured by the Constitution.

Mr. Corbin. We do, and propose to fight on it to the last.

Mr. Stanbery. Well, consider a motion made to quash that count.

Mr. Corbin. Well, write out your motion and hand it up.

Mr. Stanbery. If the court please, it is agreed that we make our objection, or a formal motion to quash when we make the objection to the second count of the indictment now presented for trial, on the ground that the allegations of the right to be secure, as the right to bear arms; your honors have held that the right to be secure from searches and the right to the free enjoyment of all the privileges secured by the Constitution of the United States, do not make any offense under these laws, and the right to bear arms, I suppose, is not secured by the Constitution of the United States, but stands in the nature of a bill of rights.

It is a restriction upon Congress against interfering with that right. It is one of the rights of the State.

Mr. Johnson—(sotto voce). Tell the court we make the point.

Mr. Stanbery. Oh, of course, that is understood. It is understood that we are to draw the motion in form afterwards, but not to take time to draw it now.

Judge Bond. Go on, take your jury, Mr. Corbin. Mr. Clerk, impanel the jury. I understand there is a motion to quash one of the counts.

Mr. Stanbery. The District Attorney waived the hearing of the motion now, and gave me the right to make the motion *ore tenus*. That must be decided before we have the jury sworn.

Mr. Corbin. Go on, if you have anything to say.

Mr. Stanbery. I have stated to the Court all I have to say about it. I have said all I intend to say about it.

Mr. Corbin. If the Court please, if there is any error that is dear to the citizen; it is the right to keep and bear arms, and it was secured to the citizen by the United States, on the adoption of the amendment to the Constitution, that right, if the Court please; that amendment rather, like the other amendment to the Constitution, had never been held to be a restriction, only upon Congress or the

federal power as against the citizen, but the argument probably, which was used by the in the case of the lessees of somebody against and, that the amendments were intended ally to be a restriction upon the United States as against the citizen of the United States. Her words that the citizens were not—the right the citizen was not to be encroached upon by Congress in this respect, and that they do not—those amendments did not apply to the States. But, if the Court please, the 14th amendment changes all that theory, and lays the same restriction upon the State, that before lay upon the Congress of the United States, viz: That as Congress, heretofore could not interfere with the right of the citizen to keep and bear arms, now, after the adoption of the 14th amendment, the State cannot interfere with the right of the citizen to keep and bear arms. That is included in the 14th amendment among the privileges and immunities of the citizen that were not referred to.

It seems to me that there can be no doubt about this; the right to keep and bear arms is a privilege of a citizen of the United States—was before the adoption of the fourteenth amendment; after the adoption of the fourteenth amendment, that privilege was extended to the citizens as against the State power. Now, the adoption, or, rather, the passage of the act of Congress on the 31st of May, 1870, attempted to secure that right. It aid all privileges and immunities, &c., guaranteed by the constitution of the United States the State is prohibited to interfere with, and Congress adopted appropriate legislation to that end. It is attempted to punish combinations and conspiracies that have for their object to interfere with the rights of the citizen by the constitution of the United States. But the distinguished counsel on the other side say this stands on the same footing with the other, because the court have said in this case that the right to be secure from unreasonable searches and seizures was a right to be secure at common law. Consequently, the constitution of the United States did not secure it—it existed before. Now, will this court say, will the distinguished counsel pretend to argue, to this court that the right to keep and bear arms was a right secured at common law? Certainly not. Such a thing is allowed in common law nowhere—in common law or modified common law, or anything else.

But this right is a distinctive right secured by the constitution of the United States, and for the first time in the history of the world, except in the case of the protestants of England, has it been secured to the citizen. It was secured to a certain class of citizens in England by act of Parliament. That itself is sufficient to negative the presumption, or rather the assumption, of the District Attorney, that it was a right secured by common law. But in the constitution of the United States, and in the amendments to the constitution, the people, in their wisdom, saw fit to insist that the right should be put in among the amendments to the constitution, and for the first time it was adopted by the people of the United States, and the right was guaranteed to all the citizens of this country. It was never guaranteed or granted before. I do not, therefore, desire to take up the time of the court to argue this question, for it appears to me to be a question as clear as it is simple, that it is a right guaranteed to the citizen by the constitution of the United States, as against the Congress of the United States; a right guaranteed to the citizen of the State as against the State by the fourteenth amendment.

Imagine, if you like, but we have not to draw upon the imagination for the facts, a militia company organized in York County, a combination and conspiracy to rob the people of their arms, and to prevent them from keeping and bearing arms furnished to them by the State Government. Is not that a conspiracy to defeat the rights of the citizen secured by the constitution of the United States, and guaranteed by the fourteenth amendment? Is not that right intended to prevent the right secured by this act of April, 1870? If it is not, may it please your honors, then this act means nothing, and we desire to know it at once.

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Mr. Johnson. It would have been as well if my brother, the District Attorney, when he vindicates the particular legislation under the fourteenth amendment of the constitution, had read the amendment. I understand him now as broadly admitting that, under the constitution as it stood before the fourteenth amendment was adopted, such legislation as this could not have been legally had.

Mr. Corbin. I did not admit that.

Mr. Johnson. I thought you did. I thought you believed it under the fourteenth amendment.

Mr. Corbin. I say that under the fourteenth amendment that right is guaranteed to the citizen.

Mr. Johnson. I thought he admitted it. But whether he did or not, it is perfectly clear that as the constitution stood antecedent to the fourteenth amendment, such legislation as this would have been invalid, as not authorized. Now, I should like to know how the fourteenth amendment changes the power of Congress? Your honors have it before you; it is in the first section of that amendment. My recollection is that it makes every man a citizen who may be born in the United States, without reference to his color, race, or condition; or who may have been naturalized by the United States; and the States are prohibited from taking from him any privilege or immunity thus guaranteed to him. Now what is that? I suppose it is one of the immunities that a citizen of the United States is entitled to, that he shall be protected against seizures and searches for papers. And your honors have decided that the count charging us with conspiracy to defeat that right, is not authorized by the fourteenth amendment.

Now if that right is not authorized by the amendment, upon what ground can counsel for the Government suppose that the right which exists in the citizen to bear arms can be protected by that amendment, for they stand upon the same footing? The latter is no more a right than the former, and if the former, as your honors have held, is a protection only as against the authority of the United States, it necessarily follows that the latter is a protection against the United States, and restriction of their power. In the case of Baron, Baltimore, the question, I think, was whether the Congress of the United States prohibited Maryland, as the parties who were acting under the law of that State, from appropriating private property to public use. Now if there is any right to be found in that or in any law, common or uncommon, modified or unmodified, one would suppose it would be the right to enjoy his own property, without the interference of the public, except it should become necessary to take it for the public use, and then only upon full compensation. But the Supreme Court decided unanimously that although it was a right and right in its nature, independent of statutory regulation or expressed law; although it was a right, the provisions of the constitution of the United States, which the counsel in the case never claimed, supposed protected him in the enjoyment of that right, did not apply, because these provisions of the constitution of the United States upon which they relied, were provisions restrictive of the power of Congress.

So my brother tells us that the right to bear arms is a right of the citizen. Where did he get the right to bear arms more than to be guaranteed against unlawful searches or against the appropriation of his property to public use without compensation? What does the constitution of the United States say about bearing arms? Nothing. What does the fourteenth amendment say upon the same subject? Nothing. The latter is as silent upon the topic as the former, and if the former cause for silence does not cover such a case as this, the latter for the same reason does not embrace it.

Now, my brother imagines a case, which shows that he must give loose to his imagination to support the law. That is a very bad support of the law: for his imagination, and any man's imagination, would generally go beyond the law. He imagines, or supposes, two militia companies are authorized to bear arms, and the arms are placed in their hands, I suppose, by this government—not by the United States—they had a right, says the learned attorney, to hold on to their arms. So they had, as against the Governor or the government, so long as he permitted them to hold

them. But suppose the men in whose hands the arms were placed had no more right to bear arms than any of those men in whose hands they refused to place them. Does not the act say that no distinction shall be made on account of race, &c.? Does not that place the white man in a worse situation than the black man? Do they not both stand upon the same level? Does Mr. District Attorney say that it would have been in the power of the State government to deny to the white citizens the right to bear arms?

Mr. Corbin. I do say that the State of South Carolina cannot do it.

Mr. Johnson. It has done it. Cannot do it? Why, we would be in a sad condition were it so. A band of ruffians combine together to burn, pillage and murder all from the cradle to the grave. Indulging in imagination, which according to the District Attorney is a fair source of authority, they want arms to protect themselves against the further progress of the outrages. The women and children are alarmed, the Governor either refuses to interfere, or seeks to get the arms out of the hands of the militia, but does not succeed. Terror fills the whole region, no man knows when he retires to his rest what may be the fate of his house or that of his wife and children. Has not the State in a case like that the right to take arms from the militia company? I think there can be no doubt of that. And if the right exists to take the arms out of their hands in such a case as that, then it is because the right to bear arms is not a right given by the constitution of the United States; but exists under the local law of the State.

Why, may it please your honors, there are a thousand rights which may be restrained in part, modified in part, or annulled; but whether they are to be restrained, modified or annulled, depends upon the enquiry, does the public safety demand it? No. I have proposed that in this particular case, this man who has, by this conspiracy, been denied the right to bear arms, was himself one of the leaders in the acts of violence, and in the communication of these threats, which were calculated not only to fill the breast of a brave man with alarm, but to fill the minds of his wife and children with terror, which, if not calmed, might, sooner or later, result in insanity. Has he a right to bear arms? He has. It is an absolute right, secured by the constitution. I submit, therefore, to your honors, that whether decided by the words of the constitution as it originally stood, or by the words of the fourteenth amendment, or decided by general considerations, which addressed themselves to the judgment and the heart, the right to bear arms is a modified right, and it is for the State, in the exercise of its own judgment, in the discharge of the obligations imposed upon them by their own sovereignty, to decide whether all men in the State shall be permitted to bear arms to the terror of all women and children of the land; or whether any particular class should be permitted to bear arms and every other class denied the privilege. I speak it with no disrespect to the colored man, but is he to have a musket placed in his hands, and a white man refused it? Now that I have supposed what may have been the case, merely for the sake of illustration, I have as much right to imagine, though my wings may not be as strong as those of the gentlemen on the other side, but I can very well conceive, and the heart of every man will lead him to that conclusion, that to permit one class of citizens to bear arms, and to practically deny it to the other, is to place that other in subjection to the former. And that would be tyrannical unbearable and utterly abhorrent to every principle upon which our institutions rest, and in conflict with the best considered rights of the other citizens: the right of the freeman to protect himself against aggression; the right of a freeman not to be subject to aggression by a class whose interests, or supposed interests, it may be to wipe them off from the face of the earth. Unless, may it please your

honors, that it be held to be within the authority of the United States Government.

I hazard nothing in predicting that the day will come when our institutions will totter to their very foundations; or, as well might you attempt to uproot a mountain from its base, as to seek to fix the yoke of slavery upon men determined to be free. The black man, it is conceded, is a freeman. In the name of justice and humanity, in the name of those rights for which our fathers fought, you cannot subject the white man to the absolute and uncontrolled dominion of an armed force of a colored race.

Judge Bond. The court is not ready to determine this question. Is the counsel for the Government ready to go on with another indictment?

Mr. Stanberry. Here is one thing, may it please your honors, we are ready to go on with, and that is the return of the writ of habeas corpus in the case of Leander Spencer.

Judge Bond. We desire to reach some case.

Mr. Corbin. There are other indictments here, but they all waive indictment for attempts to deprive citizens of the right to bear arms. That is one of the principal things in connection with this conspiracy; it was systematically done, and was one of the main objects of the conspiracy, to deprive citizens of the right to have and bear arms, and to deprive them of the possession of arms as well as to prevent them from voting. All the cases returned by the grand jury waive that count, and we will never abandon it until we are obliged to.

Judge Bond. We will go on with the matter of habeas corpus.

Mr. Corbin called the case of *United States vs. R. H. Mitchell*, and the defendants did not respond. Mr. Corbin insisted that when they gave bail they were notified to be present during the entire term of the court, and he wished it understood that if their bond was not now forfeited, he was not responsible.

Counsel for the defense said they had been telegraphed to, and that if they were not here tomorrow morning, hereafter in all such cases the bail would be forfeited.

The court then adjourned till six P. M.

#### EVENING SESSION.

The court met pursuant to adjournment.

Judge Bond. Are the counsel ready to proceed.

Mr. Corbin. We are waiting the decision of the court on the count as to the right of bearing arms. I might as well say here that we regard it as one of the vital grounds of this prosecution. This right has been trampled on again and again in this State in the most flagrant and systematic manner. I think if the right is denied us to prosecute for this offense that we had better stop.

Judge Bond. The court is not ready to give you an opinion on that subject now.

Mr. Chamberlain. There is one other indictment in which that count is omitted, but that has been fixed by the counsel for the defense and ourselves for tomorrow morning, all the other indictments have in them the count for bearing arms.

Judge Bond. There is one thing I would like to say to the bar. The act of Congress which authorizes the court to summon witnesses on behalf of the defense at the expense of the United States requires that application be made in open court. Several applications have been made to each of the Judges to issue subpoenas to the marshal to bring in witnesses for the defense, but it is not in the power of the court to do it except application be made in open court during the session.

Judge Bryan. If there is no other business before the court this evening we will adjourn, to go on tomorrow certainly with the case which has been appointed.

Mr. Corbin. I do not want the count to be too certain. I may have to appeal to the court to defer the case, in consequence of the sickness of Mr. Wilson of counsel for the defense.

Mr. Witherspoon. I have received a dispatch from

Mr. Wilson, announcing that he would be here to-morrow.

Judge Bond. The absence of counsel will not be received as sufficient excuse for delaying the proceedings.

Mr. McMaster. There are, I understand, cases fixed for to-morrow morning. When the case was presented by the District Attorney, it was altered after the indictment was brought in, and not according to the entry on the docket. The counsel who will appear in place of Mr. Wilson will insist upon the rule being followed of going by the docket, as thus only do they know when they will be brought up. When the case is on the docket, it cannot be called out of order.

Judge Bond. The District Attorney is at liberty to call a case where an indictment has been found and the parties are required to be present.

Mr. McMaster. This is new to us, and is not according to our code; but we will endeavor to be ready in the future.

Judge Bond. Can you give notice of any other trial?

Mr. Corbin. None, sir; save those that have the count for interfering with the right to bear arms. There is hardly an indictment to be presented but what contains that count.

Mr. McMaster. As the usage of the court seems to be different I ask for information. If any case upon an indictment can be brought immediately for trial, that is of a person, for instance, who may think there is no indictment against him?

Judge Bond. A reasonable time will be given. The court will not press the trial in that case, but all who have been indicted have the information and there can be little excuse for not being ready.

The court adjourned to meet on Tuesday, 11 A. M.

## ELEVENTH DAY'S PROCEEDINGS, DECEMBER 12.

The court, after hearing some incidental business, directed its attention to the Ku Klux cases.

Judge Bond. Gentlemen, are you ready to go on in any cases?

Mr. Corbin. We are waiting the decision of the court in the case of the United States vs. Mitchell.

Judge Bond. The court is not prepared to decide that in this morning.

Mr. Corbin. Well, if the court please, we will tear the indictment to pieces and withdraw that count. We are determined to go to trial on something. We ask the court to withdraw the second count in this case.

Mr. Johnson. We have done that; you may save yourself the trouble. You enter a *not. pros.* on that count?

Mr. Corbin. Yes, sir; but do not propose to in any other case.

Judge Bond. Gentlemen, are you ready for trial? Call the parties.

Mr. Johnson. A *not. pros.* has not been entered on the count yet. The gentleman is scratching it out. [To Mr. Corbin: Just enter a *not. pros.*]

Mr. Corbin. Mr. Clerk, the second count is *not. pros.*

The Clerk then called Robert Hayes Mitchell, Sylvanus Shearer, William Shearer, Hugh H. Shearer, James B. Shearer, Henry Warlick, Eli Ross Stewart and Josiah Martin, all of whom stood up and raised their right hands. The Clerk also called the name of Hugh Kell, who did not answer, and Mr. Corbin stated that he was sick in jail. The names of James Neal and Allison Carroll were also called, but they were not present. The name of Miles Carroll was also called, but he did not answer.

Mr. Hart. He does not answer to that name.

Mr. Stanberry. He pleads a misnomer.

Judge Bond (to the prisoner.) What is your name?

Prisoner. Milus.

Mr. Corbin (looking at the indictment.) It is *Melius*. The *s* is not completed.

Mr. Johnson. But does not read Milus.

Judge Bond. He is the party taken on the writ.

Mr. Corbin. Certain'y.

Mr. Johnson. It is the wrong name. The parties who had answered to their names, and who stood with their hands upraised, were ar-

raigned before the court, and the first count read, to which they plead not guilty.

Mr. Corbin. If the court please, we would say this to the defense, as we said in the other case, and we ought to have said it: It was perhaps, before this plea was taken, that if these parties are to be allowed ten peremptory challenges each, we shall try them separately. In other words, if they propose to sever in their challenges we propose to try them separately.

Mr. Johnson. He has not read the whole indictment yet.

Mr. Corbin. What do you say?

Mr. Johnson. The whole indictment is not read yet. We will answer at the proper time.

The clerk continued with the remainder of the indictment, and asked the prisoners if they were ready for trial.

Mr. Hart. If it please the court we claim the right of challenge individually.

Mr. Corbin. We ask that the case of Robert Hayes Mitchell may be taken up, if the court please. (To the clerk.)—Impanel a jury.

Robert Hayes Mitchell was required to stand up, and notified to challenge the jurors to whom he objected, before they were sworn.

January Simpson, colored, was first called as a juror, and sworn on his *voirdire*.

Mr. Stanberry. Have you formed and expressed an opinion about the guilt or innocence of these parties?

Juror. No sir; I cannot tell anything until I've heard the evidence.

Mr. Stanberry. Have you served on any jury, or been summoned to serve in this court within the last two years?

Juror. No sir, this is the first time.

Mr. Stanberry. No further objection.

The juror was accordingly sworn.

Wm. Smith, colored, was next called, and sworn upon his *voirdire*.

Mr. Stanberry. Where do you reside?

Juror. In this place.

Mr. Stanberry. Have you expressed any opinion about the guilt or innocence of these parties?

Mr. Corbin. No that is not the question.

Mr. Stanberry. You have not, you say?

Juror. No, sir.

Mr. Stanberry. Let the juror be sworn.

Edward Reed, colored, was next juror called, and sworn upon his *voirdire*.

Mr. Stanberry. Have you expressed any opinion as to the guilt of the defendants?

Judge Bond. This defendant.

Mr. Johnson. If your honors please, they are indicted jointly for the same offense.

Mr. Corbin. But they are not all on trial.

Mr. Johnson. Joint defense certainly. Does the court say that we are not entitled to ask an opinion as to the guilt of any other party, than the party on trial?

Judge Bond. I don't think you have the right, Mr. Johnson.

Mr. Johnson. Is that the opinion of the court, your honor?

Judge Bond. I hope so, sir.

Judge Bryan. It seems to me that either, or all of these parties might be guilty, or innocent; therefore it is that the guilt of the party on trial; to the one to be ascertained, and the one upon which he is to answer.

Mr. Stanberry. Have you expressed an opinion as to the guilt of all these defendants?

Juror. No, sir.

Mr. Corbin. What in that?

Mr. Stanberry. Well, he says no.

Mr. Stanberry. We challenge the juror.

Addison Richards, colored, was the next juror called, who was sworn upon his *voirdire*.

Mr. Stanberry. Where do you reside?

Juror. This place, Columbia.

Mr. Stanberry. Have you expressed any opinion about the guilt of these—all of these defendants.

Juror. No, sir.

Mr. Stanberry. You can stand aside. We challenge him peremptorily.

Henry Daniel, colored, was the next juror called and sworn upon his voirdire.

Mr. Stanbery. Where do you reside?

Juror. In Columbia at the present time.

Mr. Stanbery. Can you not live here?

Juror. No, sir, not altogether.

Mr. Stanbery. Where do you live?

Juror. Lexington.

Mr. Stanbery. Have you expressed any opinion upon this case?

Juror. I have not, sir.

Mr. Stanbery. Stand aside; we challenge.

David Leahy, white, was the next juror drawn, and sworn upon his voirdire.

Mr. Stanbery. Where do you reside?

Juror. Laurens.

Mr. Stanbery. Are you not from Union county.

Juror. No, sir.

Mr. Stanbery. We challenge him.

E. C. Rainey, colored, was the next juror called, and sworn on his voirdire.

Mr. Stanbery. Have you served upon a jury within the last two years; grand or petit jury?

Juror. Not in Columbia. I have served in Charleston. I served in Charleston at the trial of Langley and Williams. Judge Bond presided.

Mr. Stanbery. That is a cause for challenge. We challenge him for cause.

Judge Bond. That is a legal disqualification under the act of Congress. The juror is rejected.

Andrew W. Curtis, colored, was the next juror called and sworn upon his voirdire.

Mr. Stanbery. Where do you reside?

Juror. At Columbia, sir.

Mr. Stanbery. Have you heard of this case?

Juror. No, sir.

Mr. Stanbery. Expressed any opinion about the case?

Juror. I have not expressed any opinion, sir, not any since I have been on this jury.

Mr. Stanbery. Have you served upon any jury within the last two years?

Juror. I've never served in the Circuit Court.

Mr. Stanbery. We challenge him.

Ephraim Johnson, colored, was the next juror called.

Mr. Stanbery. Have you formed any opinion in this case?

Juror. No, sir, none at all. No, sir.

Mr. Stanbery. What part of the State do you live in?

Juror. Georgetown, S. C.

Mr. Stanbery. Have you been on the jury in the United States court within the last two years?

Juror. No, sir; have not attended court at all within the last two years.

Mr. Stanbery. The juror can be sworn.

The juror was sworn in the case.

Frank in J. MacMickin, white, was the next juror called and sworn upon his voirdire.

Mr. Stanbery. Have you formed an opinion as to the guilt of these parties?

Juror. I have not.

Mr. Stanbery. What part of the State do you live in?

Juror. Newberry.

Mr. Stanbery. Swear him.

(The juror was sworn in the case.)

James McGill, colored, was the next juror called and sworn on his voirdire.

Mr. Stanbery. In what part of the State do you live?

Juror. In Georgetown District, sir?

Mr. Stanbery. Have served as a juror within two years, in this court?

Yes, sir, last January, at Charleston.

The Clerk. That is the District Court.

Judge Bond. Have you the act of Congress, gentlemen?

Mr. Corbin. The act of Congress, if your honors please, reads as follows: that any person shall not be summoned as a juror, in any Circuit or District Court, more than once in two years, and it shall be sufficient cause of challenge, if he has been summoned and attended said court as a juror, at any time of said court held within two years, prior to the time of challenge.

We would suggest to the court that this refers to the separate courts. If he had been summoned in this court within two years, it would be a cause of challenge, but serving in the District Court does not.

Judge Bond. Except in the District Court?

Mr. Corbin. Except.

Judge Bond. He cannot be summoned in the District Court oftener than once in two years, nor in the Circuit Court oftener than once in two years; but he may serve in the Circuit Court even if he has been summoned in the District Court within two years. That is the construction that has always been given to the act.

Mr. Stanbery. The juror can be sworn. [He was sworn in the case.]

W. H. Jackson, white, was the next juror called, and sworn upon his voirdire.

Mr. Stanbery. Have you served as a juror in this court?

Juror. No, sir.

Mr. Stanbery. Have you formed any opinion in this case?

Juror. I have not.

Mr. Hart. Stand aside.

Gabriel Cooper, colored, was the next juror called. He was sworn without interrogation on his voirdire.

Joseph Taylor, colored, was the next juror called.

Mr. Stanbery. Swear the juror.

He was sworn in the case.

Andrew W. Burnett, white, was the next juror sworn.

Mr. Stanbery. Swear the juror.

Mr. Corbin. Stand aside.

James C. Halloway, white, was the next juror called, and sworn upon his voirdire.

Mr. Stanbery. What part of the State do you reside?

Juror. Charleston.

Mr. Stanbery. Have you served upon a jury in this court before?

Juror. No, sir.

Mr. Stanbery. No further objections.

Mr. Corbin. Stand aside for the present.

Mr. Johnson. I do not know what that means. Is that a challenge?

Mr. Stanbery. He means to challenge.

Mr. Johnson. I want to know, may it please your Honors, whether the government can set a juror aside in any other way than by challenging him. He must be sworn, unless challenged; sworn when he is called, unless challenged by one of either party. The United States have a right to challenge two and the prisoners to challenge ten. Now, does my brother mean to say that he is going to exercise the right, the right of challenge hereafter, or is this intended to be a challenge?

Mr. Corbin. We intend, if the court please, to exercise the right which the government has of qualified challenge, having the juror stand aside for the present. If the panel shall be exhausted, and the parties are required, then we must challenge peremptorily or for cause.

Mr. Stanbery. Our statute gives no such right. The gentleman is going back to a proceeding under other circumstances than these.

Mr. Corbin. What statute do you refer to?

Mr. Stanbery. I am speaking of the statute that gives to the United States two peremptory challenges. Not a right to set aside anybody; but a right to challenge, as to these two jurors to come back again. We ask them to come back again and he must determine now whether he challenge them or not.

Mr. Corbin. I think that question is too well settled to demand discussion, and I will not enter upon that discussion unless the court desire to hear it.

Judge Bond. A proceeding in this court in criminal affairs is a proceeding at common law and it was always the right at common law by the government, to tell a juror to stand aside, until the panel is exhausted.

Mr. Stanbery. But the common law never give a peremptory challenge.

Judge Bond. I know; he has that in addition by the statute.

Mr. Stanbery. That supplies the want they had before.

Mr. Johnson. If your honors have finally decided the matter neither my friends nor my self will make any attempt to convince the court that the privilege is not authorized by act of Congress; your honor is right in supposing that under the common law the government had a right to set aside the juror; but this gives them no right of challenge. But the act of Congress gives them the right to challenge. Now, in our view the right to challenge is constituted for the power of the government had to set aside jurors.



We have, as we think, may it please your Honors—unless the court has decided otherwise—we have a right to have a juror sworn, unless the government exercise its right to challenge.

Mr. Johnson resumed his seat, but rose again and said:

Let me add another word, may it please your Honors. How are we to get a jury, if the government has the right claim to by the District Attorney? We might call up eight, ten or twenty jurors; they may be competent, and we may be desirous to have some of them sworn; but he says: "Stand aside." How are we to get a jury then? Has he a right to call them back and select such of them as he chooses to call back, or is it not our right—a right necessary to the enjoyment of the privilege which the act of Congress gives—is it not our right to have every man sworn as a juror to whom the government does not object, if we do not object? I submit to your Honors that if you have ever entertained a different impression, it is quite a serious matter—not so much in this case as in others—and the court had better examine the question, if there is any doubt about it, so as to settle the question, under the act of Congress, for all time.

Mr. Corbin. If the court please, I have nothing to say in reply. I intend to observe the rules of this court, while my distinguished friend on the other side does not. Observe, that is discussing the question after the court has decided it.

Mr. Johnson. But I did that with due courtesy, I hope. The learned District Attorney seems to think that whatever he supposes the law to be, if the court gave him even a virtual recognition of it, is the law beyond all doubt. I accept of that.

Judge Bond. My brother tells me this has always been the practice in this State. It has been decided in several ways in the United States. We merely follow the settled fact. Go on, gentlemen.

Wm. Mooney, white, was the next juror sworn on his voirdire. There being no objections to him, he was sworn in the case.

Henry Fordham was the next juror called and sworn on his voirdire.

Mr. Hart. Stand aside.

Mr. Stanbery. Is the District Attorney to set aside the whole jury?

Mr. Corbin. You set him aside yourself.

Judge Bond. You set him aside; you have not exhausted your challenges yet.

Phillip Salters, white, was the next juror called and sworn on his voirdire.

Mr. Stanbery. Where do you reside?

Juror. Charleston.

Mr. Stanbery? Have you served upon a jury in the Circuit Court of the United States at any time within two years?

Juror. No, sir.

Mr. Stanbery. Have you formed or expressed any opinion about the guilt of this defendant?

Juror. No, sir.

Mr. Stanbery. The juror can be sworn.

Wm. F. Dover, colored, was the next juror called and sworn in his voirdire.

Mr. Stanbery. Where do you reside?

Juror. Charleston, sir—Charleston county.

Mr. Stanbery. Have you formed or expressed any opinion?

Juror. I have not, sir.

Mr. Stanbery. The juror may be sworn.

Wm. H. Deberry, white, was the next juror called and sworn on his voirdire.

Mr. Stanbery. Where do you reside?

Juror. Darlington county, sir.

Mr. Stanbery. Have you expressed any opinion about this?

Juror. No, sir.

Mr. Stanbery. The juror can be sworn.

Mr. Corbin. Stand aside.

Mr. Johnson. I should like to know whether we have a right to say stand aside too.

Judge Bond. No, sir. It is confined to the Government.

Mr. Johnson. (*Sotto voce*). Can't say stand aside; it is confined to the Government!

Adam Crook, colored, was the next juror called and sworn upon his voirdire.

Mr. Stanbery. If the court please, I feel, in regard to the course now being taken, standing aside jurors, as they call it, by the District Attorney, according to the old English common law practice that never prevailed here in criminal cases and could not prevail, for we have no common law to make it apply, that this practice is not allowable; and what Mr. Johnson, my colleague, and myself want, is opportunity to argue this question to the court. It is a very important matter.

Judge Bond. We will hear you on a motion in arrest of judgment.

Mr. Stanbery. That will do. (To the juror). Where do you reside?

Juror. Fairfield District, sir.

Mr. Stanbery. Do you know anything about this case now on trial?

Juror. No, sir.

Mr. Stanbery. Have you served on the jury of a Circuit Court of the United States, at any time?

Juror. No, sir.

Mr. Stanbery. This is the first time?

Juror. Yes, sir.

Mr. Stanbery. I ask you because I see your name is entered in the list here as living at Columbia.

Juror. No, sir. I live in Fairfield District, about thirty-one miles from here.

Mr. Hart. Stand aside.

Joseph Keene, colored, was the next juror called and sworn upon his voirdire.

Mr. Stanbery. Where do you reside?

Juror. Statesburg, Sumter county.

Mr. Stanbery. Do you know anything about this case?

Juror. Nothing at all, sir.

Mr. Stanbery. Have you served in the Circuit Court within two years?

Juror. Yes, sir—I served in this court, in Charleston last January.

Mr. Stanbery. Which court?

Judge Bond. The District Court; the Circuit Court did not meet there then.

Mr. Stanbery. We have no objection to this juror; he may be sworn.

Nathaniel E. Edwards, colored, was the next juror called and sworn on his voirdire.

Mr. Stanbery. Have you formed or expressed an opinion in this case?

Juror. No, sir.

Mr. Stanbery. You have not?

Juror. I have not.

Mr. Stanbery. Have you been upon a jury of the United States Circuit Court within two years before?

Juror. No, sir, this is the first time.

Mr. Stanbery. We challenge him.

John A. Pugh, colored, was the next juror called and sworn upon his voirdire.

Mr. Stanbery. Where do you reside?

Juror. Columbia, sir.

Mr. Stanbery. Do you know anything in this case now pending?

Juror. I've no knowledge of it, sir.

Mr. Stanbery. Formed or expressed no opinion about it?

Juror. I could not, because I had no knowledge of it.

Mr. Stanbery. Have you served upon a jury of the Circuit Court of the United States within two years?

Juror. This is the first time that I've been here as a juror.

Mr. Stanbery. The juror can be sworn.

Mr. Corbin. Stand aside.

Mr. Johnson. Mr. Clerk, have you the number of those who have been told to stand aside?

The Clerk. Yes, sir; four, sir.

Mr. Johnson. Very well.

Isaac Black, colored, was the next juror called and sworn upon his voirdire.

Mr. Stanbery. Where do you reside?

Juror. Columbia, sir.

Mr. Stanbery. Have you been a juror in the Circuit Court of the United States within two years before?

Juror. I have not, sir.

Mr. Stanbery. Let him be sworn.

The jurors here answered to their names—one white and eleven colored.

The court appointed Joseph Taylor (colored) for foreman.

The indictment charging Robert Hayes Mitchell was read in the hearing of the prisoner.

Mr. Corbin. May it please the court and gentlemen of the jury, the case now to be presented to you is one of an unusual importance. It is one of a somewhat startling character in this country. The defendant who is now called before you is charged with having entered into a conspiracy, and it will be our purpose gentlemen of the jury, to prove to you that he has entered into the conspiracy for the purpose of preventing and restraining divers male citizens of the United States, of African descent and qualified to vote, from exercising the right of voting.

I shall first attempt to show to you that he did enter into a general conspiracy, existing in the county of York, for the purpose of preventing and controlling the colored voters of that county and keeping them from the polls.

We shall endeavor to show an organization, perfect in all its details, armed and disguised; that this organization was bound together by a terrible oath, the penalty for breaking of which was declared to be that of a traitor—death! death! death!!! We shall show that this organization had a constitution and by-laws; that it pervaded the whole country or a large portion of it; that this conspiracy was inaugurated in 1868 in this county; that its active operations were somewhat suspended during the years '69 and '70, but that, in '71 particularly, its operations became very active; that great numbers of colored citizens who were entitled by law to vote in that county were visited by the party and whipped and many of them murdered. In this case, we shall show to you that this organization deliberately planned and executed the murder of Jim Williams, whose name you will find in this indictment, in pursuance of the purpose of the organization. We shall prove to you, gentlemen, that the defendant was present, aided and assisted in carrying out the purpose of the organization, and was present at the execution of the man Jim Williams, whose name you will find in the indictment.

The particular details will all come out in the proof that the special raid, as it was called in that county, upon civilians, consisting of some forty, fifty or sixty persons. That it met at what is called in the county of York the "Briar Patch," an old "muster" field and was armed, disguised and mounted; that under the command of a leader, whose name will appear in the testimony, this organization proceeded to the house of Jim Williams, broke in his door, took him out, fastened a rope about his neck, took him to the woods near by, and then hung him till he was dead. That they left a card upon him, which was found on the morning following the execution, simply saying in derisive language, "Jim Williams on his big muster." That on the same evening they visited divers other houses of the colored people, threatened them, took them out, robbed them of their arms, and informed them that if they should vote any more they would be killed. Gentlemen, this comprises in brief words all that we desire to show to you in the opening. We proceed in this indictment under the authority found in the sixth section of the act of May 1, 1870.

The second count in this indictment, and it contains but two charges, that this defendant and divers other evil disposed persons at York county, &c., did conspire together, with intent to oppress, threaten and intimidate Jas. Williams, male citizen, &c., because he exercised the right and privilege of voting on the third Wednesday of October, 1870.

We shall endeavor to show that this attack upon Jim Williams was not only for the purpose of preventing his voting in 1872, he with others, but because he had exercised the right and privilege of voting in 1870.

We shall ask you to particularly listen to the witnesses. Many of them are ignorant, and many of them never appeared in court before, and are unaccustomed to the trials of the witness stand.

The witnesses in the case were then called and sworn.

Mr. Stanbery requested the court to direct that all the witnesses except the one testifying leave the court.

The court directed that all the witnesses retire.

Mr. Johnson. It is not usual, may it please your honors, for the witnesses for the defense to be compelled to leave. As far as I am concerned, I have no objection to it, however.

Mr. Stanbery. I see no rule for sending out our witnesses.

The court. All the witnesses must retire.

Mr. Hart here inquired if the court could set the day for the trial of John P. Gage.

Mr. Corbin. The only objection for fixing specific days for these trials, is, that the defendants are severing in their challenges, and the government is compelled to sever in its trials, and it appears we have to go through ten or fifteen trials involving the same testimony that we are now about to present to the jury. I trust that the court, the counsel on the other side, and ourselves, may survive till we get to the end of the trials. If we do, we may live under the assurance of a very long life; hence the difficulty of fixing a day for the trial of any of these cases; and I would suggest to the court that the parties shall, in accordance with the practice here, take notice of the proceedings in the court and be ready for trial. We cannot assume any responsibility as to when any trial will or will not take place.

Judge Bond. The parties have asked for witnesses to be summoned, and it is not judicious to keep witnesses here a week or more; one or two days ought to suffice. The court can assure the counsel that the parties will not be tried till they have an opportunity of bringing in their witnesses.

Mr. Hart. There are a number of cases for trial, and I feel a delicacy in asking the court for orders for witnesses, for the same reason that the court suggests; but we do not wish to summon witnesses until the parties are indicted; hence I asked the court to assign days of trial, so that we may not be put to any unreasonable expense in bringing our witnesses here.

Judge Bond. The act gives the court discretion in determining that. I must be satisfied of the fact that the party has not the property that will allow him to bring his witnesses. The other day an order was passed to summon a man who gave bail for two others. But the court will summon witnesses in time, and set the trial for as early a day as possible.

#### TESTIMONY OF LIEUTENANT GODFREY.

Lieutenant Godfrey was the first witness called for the prosecution; being duly sworn, he testified as follows:

*Direct Examination by Mr. Corbin:*—Question. Are you an officer of the United States army? Answer. I am.

Q. What is your rank in the army? A. I am 1st Lieutenant of the 11th Cavalry.

Q. Where is your post of duty? A. Yorkville, Yorkville county.

Q. [A paper was here presented the witness.] Will you look at that paper and say whether you recognize it? A. I do recognize it.

Q. State where and how you obtained it? A. I was ordered on the night of the 20th of October, Friday, by Colonel Merrill, commandant of the post at Yorkville, to proceed to the house of Samuel G. Brown, to obtain there the constitution and by-laws of the Ku Klux Klan. The order which Colonel Merrill gave me was signed by Mr. Brown, to procure them from his daughter.

Q. Who gave you that order? A. Colonel Merrill, and the order was signed by Mr. Brown.

Q. By Mr. Hart. Where is the paper that you say was signed by Mr. Brown? A. I gave it to his daughter.

Mr. Hart. We object to the testimony.

Mr. Corbin. It was an order from Mr. Brown to his daughter to deliver the paper.

Q. What was done with that paper? A. I gave the order to his daughter, and she assisted me in the search for it. I found them in the desk.

Q. By Mr. Johnson. Who was that order from? A. The order for the constitution and by-laws was from Mr. Samuel G. Brown.

Mr. Hart. We object to the testimony. The attempt is to connect Samuel G. Brown with the conspiracy.

Q. By Mr. Corbin. Did you obtain that paper at the time you mention and the paper that is enclosed? A. I obtained these papers the next morning at the house of Mr. Brown.

Q. How and where did you find them? A. I found them in the private desk, as designated by Mr. Brown in his order.

Q. State just where you found it? A. I found it in the private desk of Mr. Brown, at his residence.

Q. Who assisted you in finding it? A. The daughter.

Q. Did she find it, or did you? A. I found it myself.

Q. Did she show you the place? A. She did, and assisted me in unlocking the desk to get it.

Q. Did you put any mark upon it? A. I did.

Q. What was it? A. I endorsed upon how I found them, and where I found them, and signed my name to it.

Q. Read it. A. [Witness reading.] The within papers were found by me in the private desk of Samuel G. Brown, of York county, when I sought for them by order of Col. Merrill, commanding post at Yorkville, for a written paper signed by Samuel G. Brown and addressed to his daughter Jennie.

Q. Is your name signed to that paper? A. Yes, sir.

Q. What did you do with that paper after you found it? A. I carried it back to Yorkville and gave it to Col. Merrill.

Q. Look at it now, and see if you find it substantially in the same condition as it was at that time? A. It seems to be in the same condition; I see no alterations.

Q. What is that little paper you have in your hands? A. This is a list of names found with the papers.

Q. Was it found with the constitution and by-laws? A. Yes, sir; it was wrapped up in the same lot of papers.

The defense declined to cross-examine the witness, Alberius Hope having been duly sworn testified as follows:

Q. Where do you reside? A. In York county.

Q. How long have you resided there? A. I have resided where I am now living for eleven or twelve years.

A paper was here handed the witness.

Q. Look at that instrument and tell us whether you have ever seen it before? A. I cannot be positive as to that matter, sir, whether this is the paper I have seen before or not.

Q. Did you give a paper containing the constitution and by-laws of the K. K. Klan to Samuel G. Brown? A. I gave him a written document.

Q. Is that the document? A. I cannot say positively that it is; the paper has been used; I was not familiar with the handwriting of the document; if this be the paper, it has been used since it passed out of my hands.

Q. What do you mean by that; that it is dirty? A. Yes, sir; it has been some time since it passed out of my hands; and I cannot be positively certain that it is the paper.

Q. How many sheets or half sheets of paper were there in that constitution and by-laws? A. I think the amount of paper is the same.

Q. Was it on a sheet and a half? A. Yes, sir.

Q. What is the substance of it?

Question objected to and withdrawn.

Q. Have you read the paper? A. A portion of I did sir. I cannot say that I ever read it all.

Q. Have you read it now? No, sir; I read a portion of it.

Q. Read it and see whether it is the same paper? A. I must say that I don't recognize the handwriting.

Mr. Stanbery. The question is addressed to the court as to the admissibility of the paper. [To Mr. Corbin.] Do you claim that this testimony goes to the jury with respect to this paper, or whether it is an examination before the court?

Mr. Corbin. I am endeavoring to prove this paper by this witness in the presence of the court and jury.

Mr. Stanbery. We object to this paper till the court has decided as to its admissibility.

Judge Bond. The counsel for the government has a right to prove the conspiracy, and he can begin at which end he pleases.

Mr. Stanbery. The question is whether that paper is identified, and the proof of the paper must be addressed to the court.

Judge Bond. You do not connect this party with these papers, if it is not the paper upon which the charge is based the prosecution is at liberty to examine the witness to show the authenticity of this paper.

Mr. Stanbery. But the testimony is always to the court.

The Court. The counsel has not offered the paper yet.

Mr. Stanbery. The question of its authenticity is before the court, not the jury.

Mr. Johnson. Some of his answers may have weight

with the jury. The objection to the paper is on that ground if it be read to the jury before it is identified. The evidence as to the identity of the paper is always submitted to the court.

The Court. He is simply endeavoring to identify the paper.

Q. Have you read that paper now? A. Yes, sir.

Q. What do you say to the substance of that paper? A. So far as my knowledge serves me a portion of it is the same. The contents of a portion of it are the same.

Q. What do you say of the paper as a whole? A. Well, I don't know as I can say anything further, than if my memory serves me, that is a portion of it.

Q. How much of it? A. So far as my memory serves me in regard to the constitution part of it, it appears to me to be about the same.

Q. Do you believe this is the paper or not? •

Question objected to.

Q. Where did you get that paper that you gave to Mr. Brown? A. I think, as near as my memory serves me, that it was given me by Major Avery.

Q. When did you get that paper of him? A. Sometime in 1868.

Q. How came he to give you that paper? A. From my statement to him that I would like to see the groundwork. At that time it was discussed in the newspapers all through the country that there was such a thing in some portions of the county, though not in ours. I expressed a desire to see the groundwork, and the document was handed to me.

Q. The groundwork of what? A. The Ku Klux organization.

Q. What did you understand from Major Avery the Ku Klux organization to be? A. I could not positively find that out.

Q. What is the general understanding?

Question objected to.

Mr. Corbin. This organization is one of secrecy, and its operations are in the dark, and their members endeavor to keep all they did, even their relation to the order secret, and it is this gentleman's understanding as to who the commanding officer was that we wish to get at.

Q. Have you ever been a member of that Klan? A. I have not been a sworn member.

Q. Have you been inside the order and recognized as a member? A. I never have as I consider it.

Q. Did you ever attend meetings of this order? A. Yes sir, I did attend one; a statement of which I have given.

Q. When was that meeting held? A. I have not the dates of anything, but as well as my memory serves me it was along about the 1st of last March.

Q. What other members of the Klan were there? A. If you call it a Klan, there were other members there.

Q. All the persons who attended that meeting—were they not members of the Klan?

Question objected to.

Q. Was it a meeting of the K. K. K.? A. I did not consider it so.

Q. Were you, or not, elected Chief that night? A. I was elected to govern that party; and allow me to state—

Mr. Corbin. That is all I desire.

Witness. The condition of the up country demanded something at that time. They had been burning and making threats in the country, and it certainly did demand that something should be done. Word was left to my house to go to that meeting. I came very near not going; but when I did go, I asked the object of the meeting, and it was said that, inasmuch as there had been so much burning and threats made round our county, that it was necessary we should come to some understanding; that we should know where to get assistance, if we needed it.

Q. Well, you organized a Klan? A. Yes, sir; if you consider that an organization.

Q. And they elected you chief of that crowd, did they not? A. They elected me leading officer of that party. Testimony objected to.

Mr. Corbin. We think this testimony is pertinent as to whether all who were present acknowledged, before proceeding to business, that they were sworn members of the K. K. or other Klans.

Mr. Johnson. We object to that. I understand him to ask whether the persons present at that meeting acknowledged that they belonged to that Klan—as to whether they said so. The proper way is to call up the men themselves, if they can get them; but they propose to rely upon the unsworn declarations of those who were present. We are entitled to have direct evi-

dence of the fact that each one was a member of the Klan in point of fact—not by his own declarations, but by something that he did—if they can show any act that he did but this in the inception of the proposed association.

Mr. Corbin. This organization, as we shall be able to show, is one that operates in the dark, and that the members were known to each other by signs and grips and by various means, and that, when they recognized each other, they talked and discussed the proceedings of the order.

Mr. Johnson. We do not object to that.

Mr. Corbin. We wish to show that on this occasion they did not proceed to business till each man had been examined to know whether he was initiated within the order. That this question was put to the members of the order, and that they all gave assent that they were sworn members of the Ku Klux Klan; and that they then proceeded to the organization, electing Mr. Hope as their chief.

Q. Was each person present at that meeting, interrogated as to whether every member present belonged to the Ku Klux Klan? A. I do not know positively that they were. It was not done by me.

Q. Was it done by somebody?

Question objected to as leading.

A. A portion of it was, but it was not done by me. A portion of them had been sworn in.

Q. Did not that apply to all of them? A. I do not think it did.

Q. They did elect you Commander that night did they not? A. Yes sir.

Q. Were there not some officers elected? A. Some were appointed.

Q. What were they called? A. Some termed them Warden, to let them know if they were needed.

Q. What is the general names by which they were known. A. I do not know; some of them called them "Night Hawks."

Q. How many Night Hawks did you elect? A. I do not remember exactly.

Q. Were there any other officers there? A. I think there were; a man that kept the roll or record, in case there was any need of them.

Cross-examination.—Q by Mr. Stanbery. You speak about going yourself to that meeting? A. Yes sir.

Q. At what season of the year was it? A. I think about last of March, 1871.

Q. You say the reason why you went to the meeting was because of certain burnings and threats, which had been made? A. Yes sir.

Q. Had you any burnings there? A. Yes sir; we had a number of them.

Mr. Corbin. We object to that.

Mr. Stanbery. It was you, who proved it; we didn't ask him if there had been any.

Q. State what burnings there were? A. Dr. Masters and Mr. Castle, and Rev. Jas. Castle and Jackson Brown, who had their globes and mills and barns and stables burned, and then the smokehouse of Mr. Brown, and others in the neighborhood.

Q. Had these burnings been frequent? A. About five or six.

Q. What threats had been made? A. Threats had been made.

Question by Mr. Corbin. Name the person who made the threats. A. It was a freedman by the name of Mick Moore.

Q. by Mr. Corbin. Did you hear him make it? A. No, sir.

Mr. Corbin. We object to the testimony.

Q. by Mr. Stanbery. They are attempting to make out a conspiracy, and to show intention, purpose and motives which instigated the parties to make the agreement. I have heard of no agreement that is before the jury, except the meeting this gentleman attended in March last. That is the only agreement which has yet been given in evidence. We want to show what was the purpose and objects of that meeting. What measures the meeting agreed to take to avert these injuries, or burnings, or threats. Supposing there had been no threats, but that the parties had been informed that threats had been made to burn their houses, or other injuries. Acting upon that information, there are abundant reasons to prove the intent, animus and motives of the meeting.

The Court. The witness says he heard those threats, but does not know who made them.

Witness. I heard of threats being made, but do not know who made them.

Mr. Johnston. The specific charge against the prisoner is, that he belonged to a conspiracy to violate the rights secured by the act of 1870, that is the right to vote or to do anything else that was secured by the act of 1-70. The counsel for the prosecution has told the jury that they proposed to prove that this was an organization for the purpose of frustrating or defeating some right belonging to our colored citizens, and especially the right of suffrage, and he has told the jury that the conspiracy or association was to that end.

Now, is it not competent for us to prove by the party, if he is a competent witness, that that was not the object of the conspiracy at all; far as is known.

That, on the contrary, his individual motives in becoming a party to that association, was to protect his own property and that of his neighbors, and the lives of those who might be connected with them, from what he supposed to have been going on in the neighborhood, by some persons, whether white or black, is immaterial, or whether there were threats or no threats. If they went together under the honest impression that such threats had been made, and should it turn out that such threats were made, of guarding themselves against the consequences of such threats.

It disproves the very ground on which the prosecution are placing their case; that they got together for a different purpose than preventing the colored man from exercising the right of suffrage. It is wholly immaterial whether there were fires or threats then or not. If they believed that these conflagrations would be continued, and honestly believe that other wrongs would be committed upon them and their neighbors, such as were indicated by the threats, then they did not only did not commit the offense charged in this indictment, but they did what they had a right to do. They acted in self-defense, upon the hypothesis which we suppose to be established by the testimony of this witness; that is to say, they acted upon the natural desire of shielding themselves against outrages, and not for the purpose of perpetrating outrages upon others.

Mr. Johnson. What was your motive in going to the meeting in March, 1871? A. For self-defense and the protection of those that were helpless in my neighborhood; to guard against anything that was going on, or that might be gotten up. There were other things which led my mind to believe there would be difficulties.

Q. You went to the meeting to guard yourselves against further conflagrations? A. I had no other object in view.

Q. by Mr. Stanbery. What did you understand to be the nature of these threats? A. It was just this, that they were threats.

Q. Who did you understand that these threats came from? Question objected to.

Q. by Mr. Johnson. You understood them as coming from somebody. A. Yes, sir, I did.

Q. by Mr. Stanbery. Did you understand these burnings to be accidental or incendiary? A. They could not possibly be accidental.

Mr. Corbin. We object.

Judge Bond. The witness has a right to answer that.

Mr. Corbin. They insist that we shall not put in any hearsay testimony, and they are asking nothing else.

Q. by Mr. Stanbery. Then your purpose in going to that meeting was to protect yourself and your family against those fires and the performance of those threats. Had you to guard your own house for several nights? A. Yes, sir. I walked my yard several nights. We could not sleep. There were several fires around us. I do not know how they came.

Q. Then you were impressed with the danger to yourself and family. A. Yes, sir; from their nearness to me I certainly was impressed.

Re-direct examination.—Q. You replied, in answer to a question, that you went to that meeting to protect yourself and the helpless ones about you. Did that include the colored people, as well as your own family? A. Yes, sir. I intended to protect all about me.

Q. Who were you to protect the colored people against? A. From any party that might molest them.

Q. Had you reference to the Ku Klux organization in that reply? A. I had no reference to any particular organization.

2. Do you not know that the Ku Klux were raiding generally? Was it not your motive to protect your colored laborers from them? A. There were raiding parties going about the country.

2. And you intended to protect the colored people your lands? A. I did, sir.

2. by Mr. Stanbery. From whom did you understand these threats to come? A. I understood them to come from a portion of the colored race.

2. by Mr. Corbin. Who did you understand were committing these raids around the country? A. My understanding was that the raids were made generally by white parties.

2. What were these raiding parties called? A. They were generally called Ku Klux.

2. What was the character of these raids; what were they raiding on, and what were they doing?

Mr. Stanbery. We object.

The Court. We think he has a right to answer that. Mr. Johnson. There is no conspiracy proved.

The Court. The witness is entitled to answer, to show the conduct of the raiding parties throughout that country.

Mr. Corbin. I do not think we will press that further.

Kirkland L. Gunn, white, was the second witness called for the prosecution. He was sworn and testified follows:

*Direct examination by Mr. Corbin.*—Q. Are you a resident of York county? A. I was, sir.

Q. When did you reside in York county—how long? A. I resided there from the time I was born until last May, sir.

Q. Were you, Mr. Gunn, during your residence in Yorkville, a member of the Ku Klux Klan? A. I was, sir.

Q. When did you join the organization? A. In January, 1871, sir.

Q. Where? A. At Wesley Smith's, in York county, near his house, sir.

Q. Who initiated you? A. Wesley Smith, John Starnes and others.

Q. Did you take the obligation of the order—the oath? A. I did, sir.

Q. I will read an obligation to you, and ask you if—Mr. Johnson (interrupting). State to us what the obligation was.

Mr. Corbin. I propose to read it. Mr. Johnson. No, sir; let him state what the obligation was.

The Court. He is entitled to read the obligation and ask the witness if he ever heard that obligation before.

Mr. Johnson. Without first asking him what the obligation was? That is telling the witness what the answer is. Our view is that, in relation to an obligation or an oath, the party must state from recollection. He can recollect, what was the character of the obligation.

Mr. Corbin. We have no objection to asking the general question. First, what was the obligation and purpose of the Klan?

A. The obligation, sir, that I took was that I should not divulge any part of the secrets of the Klan that I had joined, and it was for the purpose of putting down the colored race and negro suffrage.

Q. What was the general object and purpose of the order? A. That was the purpose of the organization, sir.

Q. Have you ever heard the constitution and by-laws of the order read? A. I heard it read, sir, when I was initiated.

Q. How were you initiated? Describe to the jury the occasion of initiation. A. I was knelt down, sir, and the oath was read to me, and then the constitution and by-laws were read to me, sir.

Q. Now I want you to look at that constitution and by-laws and say whether that was the constitution and by-laws of the order.

Counsel passed to witness a paper purporting to be the constitution, constitution and by-laws of the Ku Klux Klan, which witness examined, and answered:

A. Sir, that is in substance the same that I heard read. This obligation is the same, sir, and I think the constitution is the same in substance.

Mr. Corbin. We propose to read that paper, may it please your honors.

Mr. Johnson. Let us see it first before you read it. The paper was handed to counsel for defense.

Mr. Stanbery (to the witness.) This paper that they are handing you, did you ever see this particular paper before? A. Yes, sir.

Mr. Stanbery. When? A. I saw it in Colonel Merrill's office at Yorkville.

Mr. Stanbery. When did you first see it there? A. It was about one week ago, sir, I think now, as well as I remember.

Mr. Stanbery. That is the first time you ever saw it? A. Yes, sir, that is the first time I ever saw that paper.

Mr. Stanbery. You saw the same paper however? A. Yes, sir, I saw the same document and on another paper—the same instrument.

Mr. Stanbery. But the document you speak of is not this document? A. No, not that paper.

Mr. Corbin. We propose to read this paper, if the court please.

The Court. Read the paper.

Mr. Chamberlain, of counsel for the prosecution, read the document referred to, as follows:

#### OBLIGATION.

I (name,) before the immaculate Judge of Heaven and Earth, and upon the holy evangelists of Almighty God, do of my own free will and accord subscribe to the following sacredly binding obligation:

1. We are on the side of justice, humanity and constitutional liberty as bequeathed to us in its purity by our forefathers.

2. We oppose and reject the principles of the Radical party.

3. We pledge mutual aid to each other in sickness, distress and pecuniary embarrassment.

4. Female friends, widows and their households shall ever be special objects of our regard and protection.

Any member divulging or causing to be divulged any of the foregoing obligation shall meet the fearful penalty and traitor's doom which is Death! Death! Death!

#### CONSTITUTION.

Article 1. This organization shall be known as the — Order, No. — of the Ku Klux Klan, of the State of South Carolina.

Article 2. The officers shall consist of a Cyclops and Scribe, both of whom shall be elected by a majority vote of the Order and to hold their office during good behavior.

Article 3. It shall be the duty of the Cyclops to preside in the Order, enforce a due observance of the constitution and by-laws and an exact compliance to the rules and usages of the Order—to see that all the members perform their respective duties, appoint all committees before the Order, inspect the arms and dress of each member on special occasions—to all meetings when necessary, draw upon members for all sums needed to carry on the Order. Section 2. The Scribe shall keep a record of the proceedings of the Order, write communications, notify other Klans when their assistance is needed, give notice when any member has to suffer the penalty for violating his oath, see that all books, papers, or other property, belonging to his office are placed beyond the reach of any one but members of the Order. He shall perform such other duties as may be required of him by the Order.

Article 4, Section 1.—No person shall be initiated into this order under eighteen years of age.

Section 2.—No person of color shall be admitted into this order.

Section 3.—No person shall be admitted into the order who does not sustain a good moral character, or who is in any way incapacitated to discharge the duties of a Ku Klux.

Section 4.—The name of a person offered for membership must be proposed by the committee appointed by the chief, verbally, stating age, residence and occupation; state if he was a soldier in the late war; his rank, whether he was in the Federal or Confederate service and his command.

Article 5, Section 1.—Any member who shall offend against these articles or the by-laws, shall be subject to be fined, and reprimanded by the Order, as two-thirds of members present at any regular meeting may determine.

Section 2.—Every member shall be entitled to a fair trial for any offense involving reprimand or criminal punishment.

Article 6, Section 1.—Any member who shall betray or divulge any of the matters of the order, shall suffer death.

Article 7, Section 1.—The following shall be the rules of order to any matter herein not pro-

vided for; shall be managed in strict accordance with the Ku Klux rules.

Section 2.—When the Chief takes his position on the right, the Scribe with the members forming a half circle around them, and at the sound of the signal instrument, there shall be profound silence.

Section 3.—Before proceeding to business the S. shall call the roll and note the absentees.

Section 4.—Business shall be taken up in the following order :

1. Reading the minutes.
2. Excuse of members at preceding meeting.
3. Report of committee of Candidates for membership.
5. Collection of dues.
6. Are any of the order sick or suffering.
7. Report of Committees.
8. New business.

#### BY-LAWS.

Article 1, Section 1.—This order shall meet at ———  
Section 2.—Five (5) members shall constitute a quorum provided the O. or S. be present.

Section 3.—The C. shall have power to appoint such members of the order to attend to the sick, the needy, and those distressed and those suffering from Radical misrule, as the case may require.

Section 4.—No person shall be appointed on a committee unless the person is present at the time of appointment. Members of committees neglecting to report shall be fined thirty cents.

Article 2, Section 1.—Every member on being admitted, shall sign the constitution and by-laws, and pay the initiation fee.

Section 2.—A brother of the Klan wishing to become a member of this order shall present his application with the proper papers of transfer from the order of which he was a member formerly; shall be admitted to the order only by a unanimous vote of the members present.

Article 3, Section 1.—The initiation fee shall be ———.  
Article 4, Section 1.—Every member who shall refuse or neglect to pay his fines or dues, shall be dealt with as the chief thinks proper.

Section 2.—Sickness, or absence from the country, or being engaged in any important business, shall be valid excuses for any neglect of duty.

Article 5, Section 1.—Each member shall provide himself with a pistol, Ku Klux gown, and signal instrument.

Section 3.—When charges have been preferred against a member in a proper manner, or any matters of grievance between brother Klans are brought before the order, they shall be referred to a special committee of three or more members; who shall examine the parties and determine the matters in question, reporting their decision to the order. If the parties interested desire, two-thirds of the members present voting in favor of the report, it shall be carried.

Article 6, Section 1.—It is the duty of every member who has evidence that another has violated article 2, to prefer the charge and specify the offense to the order.

Section 2.—The charge for violating article 2 shall be referred to a committee of five or more members, who shall, as soon as practicable, summon the parties and investigate the matter.

Section 3.—If the committee agree that the charges are sustained, that member on trial has intentionally violated his oath, article 2, they shall report the fact to the order.

Section 4.—If the committee agree that the charges are not sustained, that the member is not guilty of violating his oath or article 2, they shall report to that effect to the order, and the charges shall be dismissed.

Section 5.—When the committee report that the charges are sustained and the unanimous vote of the members is given in favor thereof, the offending person shall be sentenced to death by the chief.

Section 6.—The prisoner, through the Cyclops of the order, of which he is a member, can make application for pardon to the Great Grand Cyclops of Nashville, Tennessee, in which case execution of the sentence can be stayed until pardoning power is heard from.

At the conclusion of the reading Mr. Corbin resumed the examination.

Q. Mr. Gunn, You have stated the general purposes of the order, now will you please state to the jury how those purposes were to be carried into effect? A. Well, sir, that is known, I think; but the way that I was told that they were going to carry this into effect

was by killing off the white Radicals and by whipping and intimidating the negroes, so as to keep them from voting for any men who held Radical offices.

Mr. Johnson. We reserve objections to that; it is of no consequence.

Q. Pursuant to that mode of intimidating and killing voters, was there anything of the kind done within your knowledge?

Mr. Stanbery. We object to that question—object to his saying what he was told.

Mr. Corbin. I am not asking for what he was told. Mr. Stanbery. The gentlemen have produced a constitution of the order and given it in evidence, and that has nothing in it about interfering with the suffrage. There is no such agreement in that paper. Now, I understand the witness to be asked whether he was told by some one that any other body was to intimidate voters. That is not the way to make out the case.

The Court. We think the question may be asked. [To the witness.] State what was done in pursuance of the object of the order. What was done pursuant to the purpose of the order as you have stated it according to your knowledge? A. Their principle was to whip such men as they called Radicals, and men who were ruining the negro population &c., and they murdered some.

Q. Well, Mr. Gunn, when did they do this; night time or day time? A. In the night, sir.

Q. Whether the organization was armed according to the by-laws? A. Yes, sir; they were armed.

Q. What were their arms? A. Most generally pistols, sometimes shot guns, muskets, &c.

Q. What is the Ku Klux gown referred to in the by-laws? A. It is a large gown made—all that ever I saw was made of some solid colored goods; I don't know what the color was; it looked dark in the night; I never saw a gown in daylight.

Q. What were those gowns worn for? A. To disguise the person, sir.

Q. Were the purposes of the order to be carried out with the disguise on? A. Yes, sir.

Q. When the Klan was assembled to prosecute any of its purposes, such as whipping and killing, were they disguised or not? A. Always, sir.

Q. And always moving, when? A. In the night.

Q. Whether you yourself have been on raids, or been ordered out? A. I was ordered to two sir.

Q. Who gives the order for a raid in the Klan. A. The chief.

Q. Who carried the orders in the Klan? A. The officers known as Night Hawks.

Q. What raids were you ordered upon? A. The first sir, was a raid known as the Bill Kell raid.

Q. Who brought you the order to go upon that raid? A. John Wallace.

Q. Who is John Wallace; what is his relation to the order? A. He was what we call a night hawk, sir.

Q. In whose Klan? A. John Mitchell's.

Q. Were you a member of that Klan? A. Yes, sir, I was told I was a member of it when I was initiated.

Q. Whether you went on that raid? A. We went to where the meeting place was and met several men there, and among the rest was Hugh Kell, and when he was found to be there, the chief declined going on the raid.

Q. On account of his presence? A. Yes, sir.

Mr. Stanbery. What has all that to do with it?

Mr. Corbin. General mode in which the business of the order was carried on.

Q. What was the purpose of raiding on Bill Kell? A. It was my understanding to kill him, sir.

Q. What for? A. Because he was a president of a Union League.

Q. You say that the raid did not proceed any further than the meeting place? A. No, sir.

Q. And because his brother was there? A. Yes, sir.

Q. What other raid were you ordered upon. A. One known as the raid upon Jennie Good.

Q. What was the object of the raid; who brought you the order? A. I don't remember who brought the order now.



Q. Was it an order from the chief? A. Yes, sir; it was an order from Byers.

Q. He was the chief of the Klan that was going to make the raid with another Klan? A. Yes, sir.

Q. What Byers? A. Charles Byers.

Q. Did he have a Klan? Yes, sir.

Q. How about those Klans? you say you belonged to one Klan. John Mitchell's Klan, and now you speak of Byer's Klan; tell us about the two Klans? A. They were near each other and members of the order could be called upon from one Klan by the other.

Q. Which Klan was organized first? A. John Mitchell's.

Q. How came the other Klan to be organized? A. Because they wanted a Klan in their neighborhood, sir.

Q. Now you say you were ordered by Charley Byers on that raid? A. Yes, sir.

Q. Did you go? A. I went to where they met.

Q. Where was that? A. It was on Roland Thompson's plantation.

Q. When did you meet there? A. I met Byers, Wesley Smith, Jos Smith and others, I don't remember now who.

Q. Members of the order? A. Yes, sir.

Q. How did you recognize a member of the order? A. By signs and pass words, sir.

Q. Did you recognize them in that way that night? A. Yes sir.

Q. Did you go on that raid? A. No sir.

Q. Why not? A. Because I had no saddle to ride, sir.

Q. Did the others go? A. Yes sir.

Q. What was the object of the raid—the reason of it? A. The reason that I was told, was that they wanted to drive this negro woman from Dr. John Good's premises; that she was a nuisance to his wife and they thought it a duty of the order to drive her away from there.

Q. Now tell us what some of the signs and pass words of the order were? A. This was the first sign (witness here passed his hand forward over his right ear.) It was to be answered in the same way by the left hand. This is the next sign (here the witness inserted the fore fingers of his right hand into his pantaloons pocket, the thumbs remaining on the outside.)

Q. What was the reply to it? A. It was to be returned that way. [Witness here gave the same sign with his left hand.]

Q. Go on. A. Then, when you were sitting about, you could give the sign by turning your [right] heel into the hollow of your foot, to be returned with the left the same way.

Q. Proceed. A. The pass word was, if you met any one in the night, you should spell the word I-s-a-y, and not pronounce it; if it was a member of the order whom you met, you would spell N-o-o-t-h-i-n-g and not pronounce it.

Q. Any other signs and pass words? A. None that I know.

Q. What about that signal whistle spoken of in the by-law? A. I never saw one in daylight; I cannot describe it.

Q. What sort of a noise did it make? A. A shrill, gurgling noise.

Q. Who carried the whistle? A. Each member was required to have one, sir.

Q. What was the object of it? A. To give signals with.

Q. What did it mean? A. If the chief sounded his whistle, if they were standing, and if they were stopped, the sound of his whistle meant to march on.

Q. When the Klan was ordered upon a raid how were they arranged as to names, &c.? The names were not given; they were not called by the chief or any one, and were not allowed to call each others' names on the raid; they were called by numbers.

Q. How were they numbered? A. They had different modes of numbering sir; sometimes they commenced—the first number was one handed; sometimes it commenced at five hundred, and at other times they commenced at one—the chief would be number one and go up from that.

Q. How was an order given if a detail was required? A. It was given by the Chief.

Q. He told you what he wanted done? A. Yes, sir.

Q. How did he detail men? by number or name? A. By number.

Q. How would he speak to a certain individual in the Klan, and order him to do or not do certain things? A. If it was number five, he told number five to do what he wanted done.

Q. Do you know Squire Samuel G. Brown, of Yorkville? A. I do, sir. He don't live in Yorkville; he lives in York county.

Q. Is he or not a member of the order? A. I heard him say that he was a member of the order, sir.

Q. What further did he say about his Klan?

Mr. Johnson. We object.

Mr. Corbin. We found this constitution and by-laws in his possession, and want to know what his relations to the order were.

Q. Did he occupy any official position in the order? A. He told me that he was Chief—or told it to Wesley Smith in my presence, sir.

Mr. Johnson. That won't do.

Q. He told you he was Chief?

Mr. Johnson. I object to this, if the court please.

The Court. The court will rule it out.

Q. Well, he told you he was Chief—that was all?

Mr. Johnson and Mr. Stanbery remonstrated with Mr. Corbin.

Mr. Corbin. I understand the court to rule out his admission that he was a member of the Klan.

The Court. The witness stated that he knew him to be a member of the Klan.

Mr. Corbin. If the court please, our purpose in asking the question is this: We are now, by this witness, showing the general purpose and organization of the order.

The Court. You have a perfect right to do so.

Mr. Corbin. And, for that purpose, we ask this witness if Squire Sam Brown was known to him as a member of the order. He saw he was. Now, we ask him what official position Sam Brown had in the order. He says he told him he was a Chief.

Mr. Johnson. That won't do.

Mr. Corbin. I think it is for us to prove the official relation to the order, because, how are we ever to get at a thing of that kind? Mr. Brown is not supposed to talk here and admit his official relation to the order, but what he has told to his brother Ku Klux, in the affairs of the order, what his official relations to the order were supposed to be. Of course the best evidence in the world is Mr. Brown's admission, that he was a member of the order. It seems to me in this general conspiracy we are to get at these things in this way; otherwise, we never can get at them, because it was a secret organization.

Mr. Johnson. We don't want to get at them at all.

Mr. Corbin. And what we desire to go further is to prove what these official persons in the order, who were looked upon as leaders. What they have asserted to be the purposes of the order, their admission.

An Attorney, as counsel for Mr. Brown. May it please your honor, I would say this.

Mr. Corbin. I don't think counsel for Brown is entitled to say anything about it.

The Court. That won't do.

Mr. Stanbery. I admit, if the court please, that in certain instances the declarations of co-conspirators are evidence; that he was a co-conspirator; that that party did enter into an agreement with him. How is that to be shown? Can any one declare to another I am a co-conspirator with a, b, and c, and now I've something to tell you about that conspiracy, and proceed to develop the conspiracy, and declares that he was a co-conspirator. Why is it necessary to argue that a party cannot make himself a conspirator with another, in that way, by his own declarations? not by his own declarations that he was concerned with another which makes de-

declarations evidence against another; must it not appear that the other has agreed to be a conspirator with him? The Court. He may show that they were likewise members of the conspiracy; he can go on to show the general character of the conspiracy. He can show, on the testimony of parties, who admitted that they were members of it, and their declarations as to the purpose of it. You are not affected by it until he shows subsequently that you were a member of it like wise.

Mr. Johnson. We have no doubt about the law, may it please your honors, the only question is, whether the case as it now stands, falls within the principles.

The Court. You cannot prove a conspiracy except by an examination.

Mr. Johnson. But what I mean to say is this, that they propose now to give in evidence a man's declarations, for the purpose of effecting this man on his trial, and your honors say they may, providing he was one of the Klan.

The Court. Not at all. It is not necessary that he should be a member of the same Klan.

Mr. Johnson. I don't mean that. I mean the general organization. Now the only evidence that Brown was a member is, that Brown told him he was a member. So far as finding the constitution in his house is concerned that presents a different subject. This man does not know that he was a member of the Klan; he never saw him doing anything toward the execution of the objects of the conspiracy. Our idea is that they must first prove that he was a member of the association before they can give any evidence against Brown, and they must prove that by legal evidence.

Mr. Chamberlain. If your honors please, all this evidence so far has been directed simply to the point of proving the general Ku Klux conspiracy, and we have not attempted to connect these defendants with this conspiracy. The authorities agree that we can proceed in precisely the same manner. We have proceeded to prove the general conspiracy, but before you can fasten the guilt of that conspiracy upon any individual defendant you must connect him with that conspiracy. Now we are trying to prove that York county was enveloped by this conspiracy; it was a general conspiracy; and here we have first presented the evidence of this Squire Brown, that he himself was a member of that conspiracy to which all our evidence relates. Has it not been proved then that Squire Brown himself admitted of this general conspiracy, and if he was a member of this general conspiracy, then are his acts and declarations evidence, not that these defendants were members of the conspiracy, but to prove the general character of the conspiracy.

Q. The Court. These people had a method of recognizing. [To the witness] Had you any other way of knowing that Squire Brown was a member of the order? A. Yes sir, he gave me the sign which I have just showed you, and I answered it.

Q. Well now what did he say about the purpose of his Klan—the purpose of the order? A. He and Wesley Smith were in conversation and I stepped up and he gave me the sign which I returned—he said is this man all right, and Wesley Smith said yes. "Well" he then continued, as if they had been in conversation some time—he says himself. "I can kill and whip more damn niggers with my Klan than all the rest of York County."

Q. Will you now tell—perhaps you know of the extent of this organization in York and how the Klans were situated, located throughout the county? A. I cannot give you any correct idea about the situation of Klans and the number of Klans, but to the best of my knowledge I think the majority of the white people of York County belong to the order.

Q. How many Klans did you have relations with about where you live? A. Only three, sir; that I had any connection with.

Q. Whose Klans were those? A. John Mitchell's, Charley Byers', and Bob Burris'.

Q. Can you tell us about how many members each of those Klans had? A. Burris only had twenty, Byers had I think seventeen; I don't know the number of Mitchell's.

Q. Now, please state again, what, from your own knowledge of the operations of the order and its leading men, was the purpose of the order? A. Just what I have said to you before was the purpose.

Q. Your own knowledge? Well, my own knowledge was what I was told and what I heard of being done, sir.

Q. Well, for instance, take your own chief, John Mitchell; what did he tell you, or rather, what was his statements to you, and the purpose of the order when you were initiated? A. He did not make any statements to me himself.

Q. Who did make statements to you? A. Wesley Smith and others that were there at the initiation.

Q. In the first place, you heard the constitution and by-laws read? A. Yes, sir.

Q. Then you heard the men talk at the meeting? A. Yes, sir.

Q. And Wesley Smith you heard discuss the matter? A. Yes, sir.

Q. What did he say? A. Just what I have repeated; it was to put down Radical rule and negro suffrage.

Q. Did you ever hear Charley Byers? A. Yes, sir; that is what I heard him say it was for.

Q. And the other Klan. Have you mentioned the chief of the other Klan. A. It was Sam Stewart.

Q. Did you hear Mitchell, who ordered the raid on Bill Kell, say what the purpose of that raid was. A. I did; he said it was for the purpose of killing him.

Q. For what. A. For being a President of a Union League.

Q. Now Mr. Gunn, can you tell us anything about the extent of this general conspiracy—this organization—not only in York County, but beyond the limits of York County, or beyond the limits of this State? A. I met the same order in Georgia, sir. I don't know anything about it beyond York County, in this State.

Q. You met it in Georgia, what counties in Georgia? A. I found it in Whitfield county and Calhoun.

Mr. Johnson. What has that to do with the question?

Mr. Corbin. I am proving the extent of this conspiracy.

Mr. Johnson. What has that to do with the offense charged to be committed in South Carolina? We are not to be bound by what they did in Georgia.

Mr. Corbin. We are proving the general conspiracy. It is the same conspiracy all over.

Mr. Johnson. How can you know that.

Mr. Corbin. I propose to ask the witness.

Mr. Johnson. He does not know anything about it.

Mr. Corbin. My distinguished friend has interrupted him before he can answer.

Mr. Johnson. I mean to say that a conspiracy in Georgia, or any other State, is no evidence at all of the objects of a conspiracy here.

The Court. He has stated that he knew himself, recognized it, he said, by signs.

Mr. Johnson. By signs? Very well.

Q. Did you attend meetings over in Georgia? A. I did, sir.

Q. What counties? A. The first meeting was in Catawba county.

Q. What were they doing over in Georgia to carry out this conspiracy? A. The meeting that I was at last was to raise money for the purpose of sending to South Carolina, they told me.

Q. For what purpose? A. For paying lawyers' fees and paying witnesses to go to court. [Laughter.]

Mr. Johnson (*sotto voce*). I hope they raised it.

Mr. Stanbery (*sotto voce*). That is encouraging.

Mr. Corbin (*sotto voce*). I should think that would be comforting information to you.

Q. The whole matter discussed in the meeting?

A. Yes, sir.

Q. Taking care of the K. K. brethren in this State, were they? A. Yes, sir.

Q. Was money raised. A. There was, sir.

Q. Ruise it for sending on here? A. They told me that was the purpose.

Q. Money paid in? A. Yes, sir.

Mr. Corbin began another question, but was interrupted in it by Mr. Johnson, who stated that a juror desired to retire, and he would recommend an adjournment.

The Court directed the Marshal to adjourn the court until 7 o'clock in the evening, and to take the jury in custody.

The court then adjourned.

### EVENING SESSION.

KIRKLAND L. GUNN, CONTINUED.

Q. Do you know J. W. Avery, of Yorkville? A. I do sir.

Q. Do you know whether he is a member of the Ku Klux order? A. I do not.

Q. What is the understanding in the order with reference to it? A. I understood he was a member of it.

Mr. Stanbery. We object to that testimony.

Court. That will not do.

Q. Do you know this defendant? A. I do sir.

Q. How long have you known him? A. I think about two years since I met him first.

Q. Do you know whether or not he is connected with the order? A. I do not.

Q. How far did you live from him in Yorkville? A. About twelve miles.

Cross Examination.—Q. by Mr. Stanbery. What moved you to join this order? A. I was solicited by Mr. Smith and others. I was told if I did not join it, it would probably go hard with me if anything should turn up; that if they got into power they would work for us; that was the language used to me.

Q. What part of the county did you then live in? A. At that time I was in the northeastern part of the county.

Q. Where did this Mr. Smith live? A. He lived in that portion of the county.

Q. Where was the house to which you went to join? A. It was at his house.

Q. Did he solicit you to join? A. Yes, sir.

Q. Was that the only motive that induced you to go? A. It was for my personal safety; that induced me to join them.

Q. You say he threatened you? A. Yes sir.

Q. What were the nature of his threats, and when were they? A. It was at the time he first mentioned the matter to me, that he told me it would not be good for me if I refused to join the order.

Q. Where was that? A. At his house.

Q. Who was present? A. There was no one present at that time.

Q. Were you on a visit then? A. I was at his house photographing, that was my business.

Q. Did he speak of any fires or dangers from any persons in that county? A. Not at that time; he didn't.

Q. Had you heard any thing about fires? A. Of course sir, I had heard of fires in the county.

Q. Where abouts? A. I do not remember the names of any persons now who had suffered.

Q. Was there a report of incendiarism in the county?

Question objected to, the court permits it only to show the motive of the party in joining the organization, irrespective of the fact.

Mr. Stanbery. That is what I am after. A. They wished me to join to protect myself.

Q. Did Mr. Smith speak to you about fires and dangers from any class of people before you joined? A. No sir. He did not have anything to say about dangers or fires or incendiarism or anything of that sort.

Q. But they told you it would be better for you to join? A. Yes sir.

Q. Did you know what kind of a society it was you were going to join? A. I did not till I was initiated.

Q. How long was it after Mr. Smith told you it would be better for you to join, that you did join? A. It was about two hours from the time he first mentioned to me.

Q. Who was present when you were initiated? A. John Osborn and some others, but I do not remember who they were.

Q. Was Mr. Smith himself there? A. Yes sir, he was the man who initiated me.

Q. You say there was a constitution? A. Yes sir.

Q. Did you see it? A. I did.

Q. Did you read it yourself? A. No, sir.

Q. Was it in a book? A. No, sir, it was written on foolscap paper.

Q. Was it on one sheet or more? A. I think it was on two sheets and a half.

Q. Were they fastened together? A. Yes, sir, they were.

Q. How were they fastened? A. At the side, like a copy-book.

Q. That was read too was it? A. Yes, sir.

Q. Who read it? A. Wesley Smith.

Q. After you had heard it read, what then? A. I was sworn in before I heard it read; after it was read to me I was considered a member.

Q. Were you sworn in before you heard it read? A. Yes, sir.

Q. What was the nature of the oath? A. The oath you heard read a while ago.

Q. I want you to state it? A. I cannot repeat the oath, sir.

Q. What was the substance of it that you swore to? A. I swore to be true to that order and to maintain their constitution.

Q. Did you swear to maintain it before you heard it read? A. Yes, sir, I did.

Q. After you read it, did you back out? A. No, sir.

Q. Did you sign it? No, sir.

Q. You said before that the Klan of which you became a member had for their chief Mr. Mitchell? A. Yes, sir.

Q. Was Mr. Mitchell there? A. No, sir.

Q. Have you ever met Mr. Mitchell at any of the meetings? A. At one meeting.

Q. What was that? A. It was at the meeting of the raid known as the Nunki'n raid.

Q. How long after you joined? A. I think three weeks.

Q. Where did you meet? A. It was in York county, near Bilk's creek bridge, called Barclay's Hill.

Q. Was it day or night? A. Night.

Q. Were you in disguise? A. No, sir.

Q. Was Mitchell in disguise? A. He was when he first came out there to Barclay's Hill.

Q Did he come to that point in disguise? A Yes, sir.

Q Did he take off his disguise there? A No, sir; not until he was returning back home.

Q How long did he remain there? A. Half an hour.

Q Was he in disguise all the time? A I do not know; I did not see him all the time he was there.

Q Did you separate? A. He was mixing through the party as well as I was.

Q. You say he was in disguise, and that you saw him after the disguise was off? A. Yes, sir.

Q. Where did he put it? A. He put it in a sack.

Q. Did you see him? A. I did not.

Q. How do you know? A. I saw him put some of the others in there?

Q. Had he his disguise on or off? A. He had it off when he was there.

Q. Who else did you see there? A. Wiley Harris, Charles Foster and Edward Leech. Wiley was the man who gave Mitchell his disguise to put away.

Q. Is that the only occasion on which you saw Mitchell? A. That was the only one.

Q After the first meeting when do you remember seeing him? A. Not until the time I told you of. I did not meet Mitchell's Klan any more after that.

Q. Whose Klan did you meet next? A. Charles Byas'.

Q. When was that? A. About a week after.

Q. Where was that? A. It was on Mr. Thompson's plantation, in the western part of York county.

Q. Was it night or day? A. Night.

Q. You still continued to belong to the Klan till that meeting? A. Yes, sir.

Q. Was it a part of the constitution that you should not reveal it to anybody. A. Yes, sir.

Q. When did you first make the discovery to any one not of the Klan that you were one of the Klan? A. That was last June.

Q. Can you fix about the time in June? A. I do not know what day it was.

Q. Where was it? A. At Tunnel Hill, Georgia.

Q. Were you in Georgia in your photographing business? A. Yes, sir.

Q. Who did you first discover it to? A. To my brother-in-law, Mr. McCalley.

Q. Was that the place when you were in the meeting of another Klan? A. No sir. It was before I went into that meeting in Georgia.

Q. Then did you go to that meeting in Georgia of that other Klan after you had disclosed the secret to your brother-in-law? A. Yes sir.

Q. And you went into that other Klan as if you were still a member? A. Yes sir.

Q. And you gave the pass word and signal, and claimed that you were a member? A. Yes sir.

Q. Did they put any new oath upon you? A. No sir.

Q. When was that? A. That was in this last November.

Q. Had you stated the fact that you were a member prior to the time you stated it to your brother-in-law? A. Never before that to any one. I met the Klan soon again after that in June. I met the members of the Klan and recognized them after I had made the discovery to my brother-in-law; and I met them again in November.

Q. I understood you to refer to the meeting to raise funds, that was in November? The first meeting then was in June? A. Yes, sir.

Q. At whose house was that. A. It was in the old field.

Q. How did you know there was to be a meeting there? A. I was told so by some members of the Klan.

Q. And you did attend the meeting? A. I did sir.

Q. Did you go upon any raid? A. No, sir; there were no raids made while I was there.

Q. Did you remain in that part of the country till November? A. Yes, sir.

Q. And in November you attended another meeting? A. Yes, sir.

Q. Where was that held? A. Near the same place.

Q. And you had told no one but your brother-in-law up to that time? A. I had told others after the first of June.

Q. Where did you remain from June to November? A. At Tunnel Hill, Georgia.

Q. Did you tell others before this first meeting with the Klan in June? A. It was after the first meeting that I made the disclosures to others.

Q. Who were they?

Question objected to.

Court. The counsel for the defense has the right to ask that.

Mr. Corbin. Then you will ask him when and where.

Mr. Stanbery. I trust I know how to examine my own witnesses.

Mr. Corbin. You are asking for matters in general and not for particulars.

Q. When was it you made the discovery to other persons? A. I think in September.

Q. Not before September? A. I think not.

Q. Where were you when you made that disclosure? A. Cartersville, Georgia.

Q. Who to? A. The Attorney General of the United States.

Q. Do you mean Mr. Akerman? A. I do sir.

Q. How did you happen to go to Cartersville? A. That was my business, to tell him.

Q. Did you tell him you were a member of the body? A. I did, sir.

Q. Were you employed by him? A. I was not.

Q. What took place upon your letting him know you were a member of the body. A. He took a statement from me.

Q. That was all? A. That was all that took place between me and the Attorney General.

Q. After that you attended no future meetings? A. I did, sir.

Q. Still making believe you were a K K K? A. I did not tell them that I had made any disclosures.

Q. Did you receive any employment or any compensation for any services that were rendered at that time? A. Not a cent at that time.

Q. Now, when were you first employed in the character of a detective, and who employed you? A. I never was employed as a detective.

Q. How were you employed, and who employed you? A. I never was employed by any one, sir.

Q. You say you didn't get any compensation at that time; at what time was it stipulated that you were to have such compensation? A. No such a ———, I never was promised anything.

Q. You were never promised anything? A. Not a thing.

Q. Did you see no officer about this business, after you saw Mr. Akerman? A. No, sir.

Q. Military or civil? A. Not until I saw Col. Merrill at Yorkville.

Q. Where did you come from when you saw him? A. I came from Washington city.

Q. What took you to Washington city? A. I went with my friends to see the city.

Q. O, you went to see the city? A. I did.

Q. You found it a fine city? That was your only business? A. That was all my business, sir.

Q. Had you ever been there before? A. Never, sir.

Q. Where did you start from, for Washington? A. Dalton, Ga.

Q. When you got to Washington, what did you do?

Mr. Corbin. About what?

A. What did I do, sir?

Q. You say you went to see the city. Did you do anything but look at the city? A. That was all I did.

Q. Did you see Mr. Akerman? A. I did, sir.

Q. O, you did go to see him, but that was not a part of your business that took you there? A. It was not.

Q. Was any body with you? A. Yes, sir.

Q. Who? A. Colonel Baker and some other friends.

Q. What did they go to the city for? A. Colonel Baker went to prosecute southern claims.

Q. Who were the others? A. Some men who had claims against the government, sir.

Q. You came on their account, but you had no business? A. I had none at all, sir.

Q. But you went to see Mr. Akerman? A. I did.

Q. In his office? A. I did, sir.

Q. When you got them what business did you have with him? A. None, at all with him, sir.

Q. Just a friendly call upon him? A. None at all.

Q. You had nothing to say to him? A. We spoke

about matters; of course we did, but not about Ku Klux matters.

Q How long did you stay in Washington? A A week, sir.

Q Did you visit Mr. Akerman a second time? A No, sir.

Q Just once, all that week, but looked at the city? A That was all the business I had, sir.

Q Did you return back to Georgia? A I came to Yorkville, sir.

Q What was your business at Yorkville? A I came to see my friends, sir. My father lives in York district, and I came home to see my friends.

Q How far do they live from Yorkville? A Ten miles, sir.

Q What time was that? A I think it was about a week and a half ago.

Q That was right from Washington? A Yes, sir.

Q Then you were at Washington within two weeks of this time? A I was sir.

Q Was that as late as the beginning of this month? A I can give you the date I left Washington. [Witness referred to a memorandum and continued.] I left there on the 23rd of November.

Q Have you a memorandum of the time you left there? A No, sir, I have not.

Q You came immediately to your friends? A I did, sir.

Q When did you first go to Yorkville? A On Monday morning, after I came home from Washington on Saturday evening.

Q Tell us your purpose? A I had no purpose at all, sir.

Q None at all? A None at all, sir.

Q Had you ever been there before? A I think I have, sir.

Q And had no business whatever? A I had none at all, sir.

Q What did you do when you got there? A I didn't do anything, sir.

Q Whom did you see? A Well, among the rest, I saw Col. Merrill; I saw several men.

Q Did you go to see Col. Merrill, or did he go to see you? A I went to see Col. Merrill first.

Q Did any body go with you? A Mr. Wallace went with me, when I first went to see Colonel Merrill.

Q Where did you find Mr. Wallace? A I met him a few miles below York, on the Pinckney road.

Q When you were coming to Yorkville? A Yes, sir.

Q Was it agreed at that time that you and he should go to see Colonel Merrill? A It was, sir.

Q For what reason? A Because I had told him of the disclosures I had made.

Q You told whom? A Colonel Wallace.

Q Whereabouts? A When I first met him in the road.

Q Was that the same day you went to see Merrill? A It was, sir.

Q Did he turn and go with you to Merrill's? A We went into his house, and went back that evening.

Q To see Colonel Merrill. A Yes, sir.

Q What took place when you got to Colonel Merrill's house? A I don't remember now what did take place.

Q You don't remember what took place? Why, that is the most recent thing you have been about; that was only a week and a half ago. A There was nothing special took place.

Q Nothing special. Did you make a formal call for civility, or did you have business? A I had no business with him.

Q Who opened the conversation? A Colonel Merrill.

Q In what way? A Well, that I can't tell you now. I do not remember what he said to me now.

Q You cannot recollect what you said to him about it? A About what, sir.

Q About what he said to you, and what you said to him? A I believe we were talking about a cool night, when we first went in.

Q. You recollect that? A. I recollect that much of it.

Q. Well, talk about this matter of business? A. There was no business transacted, sir.

Q. No talk about it? A. I believe that Colonel Merrill and some of his officers were talking about business.

Q. Do you mean that you did not join in their conversation? A. I did not, sir.

Q. Then you had nothing to say to Colonel Merrill about business, and he nothing to say to you? A. Not that night, sir.

Q. You cannot tell why it was that Wallace wanted you to go to Merrill's? A. Colonel Merrill invited me to come back next morning, sir.

Q. Did you go back next morning? A. I did, sir.

Q. Was that the business meeting? A. If you call it business, I suppose it was, sir.

Q. Tell us the business with Colonel Merrill? A. Colonel Merrill wanted me to come before the United States Court as a witness: that was the business; he told me he wanted me to come down on Saturday after that, which I did.

Q. Did you tell Colonel Merrill anything that you knew? A. I did, sir.

Q. What did you tell him? A. I don't remember now all that I did tell him; he made statements in writing; you can find them, sir.

Q. Did you tell him that you had seen Mr. Akerman? A. I did.

Q. Did you tell him that you had gone to Washington? A. I did, sir.

Q. Did you tell him that you were employed by Mr. Akerman or any body else? A. No, sir, I did not tell him I was employed by any one, because I was not.

Q. Up to that time you say you were not employed by any person in any way whatever? A. I was not, sir, in the employ of any one.

Q. Did you receive any moneys of compensation from any one? A. No promises made me, sir.

Q. Have you received any compensation?

The witness here hesitated a moment.

Mr. Stanbery. It can't take long to answer that question.

A. I have, sir.

Q. When did you receive it? A. When I was in Washington, sir.

Q. From whom? A. From the Attorney General's clerk.

Q. How much? A. \$200.

Q. What for? A. For to defray expenses in, in going to Cartersville, and other places to see him.

Q. To see whom? A. Mr. Akerman.

Q. \$200, because you had gone to Cartersville? How far was it from where you were in Georgia to the place where the Attorney General was? A. Sixty miles.

Q. By railway? A. Yes, sir.

Q. Would it take \$200 for that? A. Not quite that much, I think.

Q. What other expense was this \$200 to defray? A. I don't know anything else, sir.

Q. Did you tell that clerk that \$200 was a great deal more than your fare was? A. I did not.

Q. Did he tell you when he handed you that \$200 that it was because you had been put to that much expense in going to see Mr. Akerman? A. No, sir; he didn't tell me anything about that at all.

Q. No explanations made? A. He counted me \$200 and I signed a receipt.

Q. Do you recollect the character of the receipt you signed? A. I didn't read the receipt, nor I didn't hear it read.

Q. Was that after you had seen Mr. Akerman or before? A. Afterwards.

Q. By whose order? A. I suppose by the Attorney General's order.

Q. Did he tell you who gave the order? A. No, sir.

Q. Was it in the outer office that you got the money? A. It was, sir.

Q. Was it when you went out from the Attorney General's room? A. It was in the middle room between his office and the waiting room. There is where Mr. Akerman and I met; and Mr. Akerman went to his office and told me to remain, and his clerk came and gave the money, and told me that Mr. Akerman could not see me any more that day, and I left then, sir.

Q. Did the clerk tell you that that was forgoing to see Mr. Akerman at that place? A. He did not tell me for what purpose it was for.

Q. And you didn't know for any other purpose? A. That was all.

Q. And you took the money for compensation for that? A. I did; and would have taken that much more if he had given it.

Q. You would? A. I would, sir.

Q. Now, will you state whether you have received any other compensation? A. I have not.

Q. Have you had the promise of any other? A. No promise made me, sir.

Q. And do you again say that your purpose in going to Washington, was not to be employed or get money? A. No, sir; it was not my intention.

Q. Only to see the city? A. Only to see the city; that was all.

Q. How were your expenses on the railroad paid coming back? A. I paid them myself, sir.

Q. When you had the conversation with Mr. Merrill, who opened it? A. He asked me what I knew about this Ku Klux matter, I believe, sir. I commenced and made some statements to him, to the best of my recollection, what I knew and what I had heard.

Q. Were you asked in any way to make these disclosures upon any promise of not being prosecuted your self? A. No, sir; there were no such promises made me.

Q. Have you had any personal difficulty with Mr. Mitchell? A. Never had any personal difficulty with him at all.

Mr. Corbin. Which Mr. Mitchell do you refer to?

Mr. Stanbery. John W. Mitchell.

Q. Do you recollect any difficulty in the church where you had your gallery? A. He told me he wanted me to take my apparatus out of that, but it did not amount to a difficulty, or any hard feelings on my part. I told him I would do it as soon as I could, which I did do.

Q. That is the only difficulty you recollect? A. That is all.

Chas. W. Foster was the fourth witness called for the prosecution.

*Direct Examination by Mr. Corbin.*—Q. Where do you reside? A. I reside in York County, sir.

Q. How long have you lived there? A. I have lived there since the surrender. I was bred and born in that county. I went to a new county and came back again after the surrender.

Q. When did you join the K. K. organization? A. I think it was about the 15th of December. Somewhere between the 15th and 20th.

Q. Last December? A. Yes, sir.

Q. What Klan or organization did you join? A. I joined in Aleck Smith's Klan first, and was transferred to John Mitchell's.

Q. That John W. Mitchell? A. John W. Mitchell.

Q. When were you transferred to his Klan? A. I don't know the date.

Q. Were you sworn into the Klan—did you take an oath? A. Not in Mitchell's Klan, I didn't.

Q. But when you were initiated? A. Yes, sir.

Q. Who administered that oath to you? A. Herod Neal and Jim Arrowood.

Q. Do you remember the oath you took? A. I suppose I could.

Q. Tell us as near as you can the character of that oath? Well sir, the first was to protect women and children, I believe—put down radicalism—put down Union Leagues, &c.

Q. What was the penalty, if anything, to the oath? A. The penalty was, if a man divulged any secret of the society, he was to suffer death! death!! death!!!

Q. Would you recognize the oath if you should hear it again? A. I suppose I would, sir.

Listen to this. [Counsel here read the oath as read to Gunn.]

Q. What do you say to that obligation? A. That is about the same that we had.

Q. Now Mr. Foster state what the general purpose of the order was? A. The general purpose of the order?

Q. Yes, as you understood it, practically carried into effect?

Mr. Stanbery. I object to any such loose questioning as that. Here is the document which gives the scope and purpose of the organization. He may have understood it very differently from what

others understood it. This as far as we can understand, is the only agreement they entered into sustained by that oath. As to it we don't see anything to trouble any body, except the man that divulges. First we are on the side of justice, humanity and constitutional liberty as bequeathed to us in its purity by our forefathers. Second, we oppose and reject the principles of the Radical party.

The Court. That has been read once, Mr. Stanbery. This party can give the interpretation that they put upon that paper.

Mr. Stanbery. Here is the agreement that I was about to read to your honors, further to show that there is no criminality in it so far as I can see. Now when a party enters into such an agreement either to make him criminal because another man understands it to be something criminal—

The Court. He only asked what he understood was the meaning and interpretation of that. There is a clause which says they shall put down Radicalism; what is the meaning of that?

Mr. Stanbery. Let it speak for itself. What has the interpretation of this man to do with it?

The Court. The interpretation that the Klan put upon it in their conduct.

Mr. Stanbery. When you come to a matter of conduct it is another thing, but now the interpretation that this man put upon it won't answer. Here is the agreement.

The Court. Ask the witness what the purposes were to be carried out.

Q. How were the purposes of the order to be carried out? A. Well, sir, generally, whipping those men who belonged to the League, members of the League.

Q. The Union League? A. Of the Union League, both white and black.

Q. Now what do you understand—

Mr. Stanbery. I object to that.

Mr. Corbin. We insist on that, if the court please.

Mr. Stanbery. Very well, I object to the interpretation that he puts upon that agreement.

Mr. Corbin. I am not asking him about that agreement. I am asking him what he understood to be the purposes of the Ku Klux organization to which he belonged.

Mr. Stanbery. You have given the interpretation in writing, and we would like to see you proceed regularly.

Mr. Corbin. I would like to see you proceed regularly for a little while.

Mr. Stanbery. I am not accustomed to such interruptions, if the court please. My objection to this is that they have produced the written agreement by which these men were bound together, sustained and supported by an oath to sustain and preserve this agreement.

I see nothing criminal in it; the agreement must speak for itself; the court must construe it, not the witness. It is a written paper, to be construed by your Honors. It is a paper that, apparently, is innocent—that contains no criminal agreement. It is to be made a criminal, because somebody else puts a criminal interpretation upon it? The question is, whether the paper itself is susceptible of a criminal interpretation. I have belonged to societies myself, in college; I have signed written constitutions, with great many agreements in them about not divulging, and many other rules very much like those rules.

Well, now the constitution and agreement of those societies were perfectly innocent, entirely so; so that any man might sign them without committing a crime, might enter into such an agreement without being made a criminal; take for instance myself, signing such constitutions of such societies, can I be made a criminal because some other member in that society had a criminal intent, or put a criminal interpretation upon the paper itself? Is there such a rule as that that a man, who does understand a thing, as it is to be understood, puts a right interpretation upon it so far as the paper shows, shall be bound by a criminal interpretation put on it by some body else? My objection therefore is, to giving a character and construction of this paper by the instruction and interpretation put upon it by others. It is quite a different question when you come to fulfill any purpose of this paper. What did they do—that is a very different question.

The Court. Mr. Stanbery, the difficulty is this. They present a paper to the jury which starts with a preamble and provision, which would indicate a



society similar to a charitable association, and then there is a clause which punishes with death, which punishes anybody with death who shall disclose any of its purpose and in order to execute these charitable objects, men are required to go in disguise. It does not look much like a charitable association, and the question asks this witness to explain the meaning of that paper as his Klan understood it, so far as he knows, and we think it is competent: [To the witness.] What was understood in the meeting at which you were when you took that obligation, and what was the meaning of that paper, you were to put down Radicalism and go in disguise and suffer death if you divulged. Now state how you were to do it? A The understanding was they never were to go in disguise, only of a night; show no signs in the day time. Towards the last of the Ku Kluxing, there was no man allowed to give any signs.

Q What was the purpose of the order? A The purpose of the order?

Q Yes. What did you understand to be the general purpose of the order?

Mr. Stanbery. Does the court allow that question?

The Court. We want to get what was the understanding of the persons who signed that paper.

Q Well, tell us what was the understanding of the persons who signed this paper? A It was not to divulge any secrets; to attend all meetings; to go on all raids that was ordered. They were to be fined a certain fee, whatever the Klan pleased to put on them, if they did not.

Q What were the raids for? A To put down Radicalism, the raids were for.

Q In what way were they to put down Radicalism? A It was to whip them and make them change their politics.

Q Is that your understanding? A Yes, sir. That was my understanding about the matter.

Q That the understanding of the Klan? A I think it was, sir.

Q And all the Klans that you were acquainted with? A Yes, sir.

Q What Klans were you acquainted with? A I was acquainted with Parker's Klan, and before that—

Q What Parker? A Eleazar Parker.

Q Where was that Klan located? A It was in Union.

Q What other Klans were you acquainted with? A None, only Smith's. That was not to any account.

Q What Smith was that? A Aleck Smith.

Q Do you know any other Klans? A No. I heard of several, but then I don't know them to be regular organizations. Marr—Mat S. Marr—had a Klan.

Q How many men in that Klan? A I don't know particularly.

Q Have you any idea? A No, sir. I suppose some twenty, thirty, or forty.

Q How many meetings of the Klan did you ever attend? A I was on one regular meeting; that was when the Klan was organized. Then I was on two other meetings after that, to go on raids.

Q How many raids have you been upon, by order of the chief? A Two, sir.

Q Now, will you state to the jury what was done on those raids? A Yes, sir. We were ordered to meet at Howl's Ferry, and went and whipped five colored men. Presley Holmes was the first they whipped, and then went on and whipped Jerry Thompson, went then and whipped Charley Good, James Leach, and Amos Lowell.

Q How many men were on these raids? A I think there was twenty in number.

Q How were they armed and uniformed? A They had red gowns, and had white covers over their horses. Some had pistols, and some had guns.

Q What did they wear on their heads? A Something over their heads came down. Some of them had horns on.

Q Disguise dropped down over their faces? A Yes, sir.

Q How many men were on that raid? A I think it was twenty in number.

Q What was the object in whipping those five men you have named? A The object was, in whipping Presley Thompson, was about some threats he had made about him going to be buried in Salem graveyard.

Q What was the first to occur? A Well, sir, this man Webber; he was leading the Klan from the other side of the river, ran into the yard and kicked down the door and dragged him out, and lead him off about two hundred yards, and stripped his shirt and whipped him.

Q How many lashes did they give him? A I cannot tell you how many.

Q Did they whip him severely or not? A I heard Mr. Smith say that he was sorry enough for him to cry, that his shirt was stuck to his back.

Q What occurred at the next place? A They whipped Jerry Thompson at the next place. They whipped him about some threats he had made about an old soldier. He said he would kick the old soldier's hind parts.

Q That was the special cause? A Yes, sir, and he was also a member of the League.

Q Was anything said about that when they whipped him? A I think there was, told him never to go to any more meetings, to stay at home and attend to his own business.

Q What was done at the next place? A They went there and whipped Charley Good, he was supposed to be an officer in the League. He had been seen with his stripes on. They whipped him very severe, they beat him with a pole and kicked him down on the ground.

Q What did they tell him? A To let Radicalism alone, not to go to any more League meetings, if he did, his doom would be fatal.

Q The next place what did they do? A They went then to Charley Leach's, at Mathewson Marr's house. I didn't go into the yard there, I stood out in the road. They whipped him though.

Q Did they break down his door? A I think they did.

Q Hear anything they said to him? A I heard it, but could not tell what it was.

Q That is the first raid you were on? A Yes, sir.

Q Now tell us about the second raid. A The second raid, we were ordered to meet in an old field, below Dr. Whiteside's. I don't know what the purpose of that meeting was.

Q How many men of the Klan did you meet there? A There were some seventeen or eighteen, I think.

Q In disguise? A Yes, sir.

Q Tell us all about it. Who was in command? A Julius Howe was leading the Klan that night.

Q Tell us where they went first. A The first place they stopped was at Mrs. Watson's; called for a nigger there, but he was sick and they didn't disturb him; went on then to Mr. Moore's quarter, and there they got a double-barrelled shot gun—didn't whip anybody though; went on then down to Theo. Byers; they didn't do anything there; and then they went to Chancellor Chambers and got a gun there.

Q From whom? A I don't know who they got it from.

Q Colored or a white man? A Colored man.

Q Get it from his house? A Took it out of his house. I think it was an knifed rifle, which had been cut in two; went on then down to Ed. Byers' or Theo. Byers' place, I don't know which; they whipped a couple of niggers down there; one pretty severe; he was named Adolphus Moore.

The Court. Was he in bed when they got there? A Yes, sir.

The Court. What time of the night was it? A I suppose between twelve and one o'clock; might have been not so late.

Q What did you whip these men for? A I don't know, I never understood what. I think that the impression was that they had been concerned in some burning probably.

Q Anything known about it? A No, sir, not that I know of.

By the Court. How far from your house was it? A About five miles.

Q. Did you have anything personal against any of these men? Did you know anybody in the Klan that did? A. No, sir, I didn't, no, sir.

Q. On these raids, these two raids, were you carrying out the general purpose of the order? A. I think they were, sir.

By the Court. Ask the witness if these parties had had any trial.

Q. Had these parties who were whipped been tried in any way?

A. No, sir, I don't think they had. If they had it was unbeknown to me.

Q. When you went upon these raids were you under perfect discipline and control? A. Yes, sir, pretty much.

Q. That is, you obeyed the orders of your chief. A. I tried to do it, sir.

Q. You have been a soldier? A. I was a soldier for four years.

Q. Most of the members of the Klan had been soldiers? A. I think so. Some of them were young boys; they had never been soldiers.

Q. Had the chief of the Klan been a soldier? A. Captain Mitchell; yes, sir; he was a captain in the war, I think.

Q. During the late war? A. Yes, sir.

Q. Whether he carried out military discipline while on the march, &c.? A. No, sir, he never. I never was with him only one time, and then Weber led the raid that night.

Q. Whether there was any other Klan joined you? A. Yes, sir. We went as far as Ed. Byers', and there we met—I don't recollect—I don't remember the number of men—but we met some more men there, said to be the Rattlesnake Klan, from Sharon.

Q. Who was in command of that Klan? A. They said Will Johnson.

Q. Did you go on together after that? A. Yes, sir, went by Mr. Stanson's and then down to Wilson Wilson's, and they whipped him.

Q. Tell us about that. A. The whole party stopped in his yard, and after Mitchell's Klan went on, the Rattle Snakes went back and whipped him, and liked to have killed him, so one of the men told me after he came back.

Mr. Stanbery. Do you know anything about it yourself? A. I suppose I do, if I did not I wouldn't be telling it.

Q. How far were you away from where this whipping was done? A. Well, sir we started and went on down towards Bill Williams and they overtaken us just before we got to Billy Wilson's.

Q. Did they tell you about what they had done? A. Yes, sir. Hugh Kell told me. He said they whipped him and it was all they could do to keep Will Johnson from killing him.

Q. What did you do next? A. They went down, they said after a black man by the name of John Thompson, who was accused I think, of some burning. They were going down to whip him I think, and they got down there and found that Mr. Wilson was in his house and went and called him out.

Q. Is he a white man? A. Yes, sir.

Q. What did you go for him for? They said they were going down to talk to him.

Q. What did you do at his house? A. They called him out and talked to him, and it was all they could do to keep the others from going into the house to Mrs. Wilson. She had been confined in the afternoon at 4 o'clock, and me and another young man kept them out. I knew the circumstances. He came out on the steps and they talked to him.

Q. What was he accused of? A. He was called a Radical in the neighborhood; he had taught a nigger school and voted the Radical ticket.

Q. Was that the reason of your visiting him. Tell us what they said? A. They called him out and told him to let Radicalism alone.

Q. What did you do to him? A. Nothing, only talked to him. Some of them, I believe, punched him a little, and probably kicked him when he went back into the house.

Q. Where next? A. I didn't get quite through then.

Q. Well go on and finish. A. They told him there was any more burning done within ten miles of his neighborhood they would take his life; they would hold him responsible for all the burnings in the neighborhood.

Q. What did he say? A. I don't know what he said. He didn't have much to say, no way.

Q. Did anybody accuse him of burning? A. Not as far as I know of.

Q. Anything further? A. The party went on back to their horses then and dispersed and went home—the Rattlesnakes went one way and Mitchell's Klan went the other; went on this side of Bullock's creek, and there they took off their disguises.

Q. Who took the disguises? A. Captain Mitchell's son took care of them.

Q. Who usually kept the disguises? A. I think they were usually kept by Captain John Mitchell.

Q. Brought out when you went on raids? A. Yes, sir; the biggest part of them. Some of them kept their own.

Q. What is Captain Mitchell's son's name? A. Joseph.

Q. When you went out, Mr. Foster, did you usually know in advance what was their object? Sometimes I did and sometimes I did not. They did not allow me to know much about it no way. They only wanted me to go. I was ordered to go on raids after that but didn't go.

Q. What raids? A. I was ordered to make a raid on the Treasury at Yorkville.

Q. The County Treasury? A. Yes, sir.

Q. Who ordered you to go on that raid? A. I got the order specially from Joseph Mitchell.

Q. Did Mitchell tell you what they were going to do? A. He did not, but I heard the next day where they had been.

Q. What other raid was you ordered on? A. That was all the orders that I ever had.

Q. When you started out and went, whose orders did you obey? A. I generally obeyed the orders of the person who was in command.

Cross Examination by Mr. Stanbery.—Q. You spoke about burnings in that neighborhood—have there been burnings there? A. Dennis Crosby had a gin house burned there.

Q. Who else? A. I don't know. Yes, sir, Mr. Castles had his barn burned.

Q. What neighborhood did they live in? A. Mr. Castles lives within four miles of me, on the same road toward Yorkville, and Mr. Crosby lives on the Pinckney ferry road.

Q. You spoke of threats, too; what were the threats said to be—were they threats of colored men, do you mean? A. Yes, sir.

Mr. Corbin. Well, he heard of them making threats. A. I heard of them making threats.

Q. I want to know what were the sort of threats that was understood to be made?

Mr. Corbin. We object to that, because, if they propose to show any justification of this course of conduct adopted by the Klans, and that justification consists of threats, they must prove the threats and not prove them by mere hearsay.

The Court. It is no justification anyhow.

Mr. Stanbery. Shall I put the question? (The Court.) Yes.

Q. What sort of threats were they that they were understood to have made—these colored men?

The Court. What threats did you hear them make? A. I didn't hear any threats made by them.

Q. But what threats did you understand they had made? A. The first was whipping of Presley Thompson; was because he says he wanted to be buried in a white person's graveyard.

Q. And some other threats about an old soldier? A. That Jerry Thompson had made, I suppose; that is what I have heard.

Q. What in regard to the old soldier? A. He should have said he would kick an old soldier's hind parts.

Q. Have you spoken about the Union League?

Q. What is the nature of the Union League? A. I don't know anything about them.

Q. Did you never hear? A. No, sir.

Q. Who belonged to the Union League? A. I don't know who belonged to them, only what I heard.

Q. What do you say about it? A. Well, I heard that these niggers—

Mr. Corbin. If hearsay testimony is to be heard here, and act accordingly—

The Court. What is the question?

Mr. Stanbery. I asked him what was the purpose of those Union Leagues.

The Court. I don't see that that is admissible.

Mr. Stanbery. It may be that it is a purpose that ought to be put down. I want to know what a Union League is.

Mr. Corbin. Well, the witness says he don't know.

Q. Do you know any members of the Union League? A. Only what I heard, and hearsays will do you no good, nor me neither.

Q. Were those men belonged to the Union League. Did you hear those parties say that were in it what they understood to be the object of the Union League? A. I did not.

Q. Were those burnings attributed to these Leagues or members of it? A. I do not know, sir.

Q. What induced you to join the Klan? A. Well, sir, because this party came on me and threatened my life; shot into the house I was doing business in.

Q. What house were you engaged in at the time? A. I was selling spirits and a few other groceries, flour, tobacco, candies and such other things.

Q. And some parties called upon you? Who called upon you? A. [The court. A Klan he says.] There was a Klan of Ku Klux came on me at night.

Q. What night? A. Yes, sir, the same night that they went on Elias Ramsay, and whipped one of the whites the same night.

Q. When did the Klan come upon you; for what purpose? A. I don't know, unless it was dissatisfaction in the neighborhood because this liquor establishment was going on.

Q. What did they say to you when they came? A. They didn't see me at all. I was not in the house; but they left word with Mr. Osmond that they would come again, and when they came again they had the cold steel prepared for my carcass, and I thought it my duty to go into anything to save my life.

Q. Then that was your inducement in joining the Klan? A. That was my inducement in going into it.

Q. That was to give you an opportunity to put the cold steel into somebody else? A. No, sir.

Q. How long did you continue in the Klan? A. I joined just before Christmas, and never—well, I went on two raids and never had anything more to do with it afterwards.

Q. Were you arrested as a member of the Klan? A. No, sir, I went up and made a confession.

Q. Were you never in jail? A. Yes, sir, I was, but I suppose I was put there as a witness.

Q. Were you put in there before or after you made your confession? A. After I made the confession.

Q. And you suppose as a witness? A. I suppose so.

Q. Whom did you make your confession to? A. Before Colonel Merrill and Major Corbin.

Q. Whereabouts? A. At Yorkville.

Q. When? A. I don't recollect the date. I think it was on the seventh of last month, as well as I recollect.

Q. How long after that was it before they put you in jail? A. The same day.

Q. After you had made your confession? A. Yes, sir.

Q. How long did you remain in jail? A. Until the 27th.

Q. How did you get out? A. I got out on a bond, sir.

Q. What kind of a bond? A. I don't know what kind of a bond it was.

Q. Before what officer. A. Esquire Clawson brought the bond to me.

Q. What jail were you in that time? A. I was in the Yorkville jail.

Q. Was that jail under military rule at the time? A. Yes, sir.

Q. Did Klan come to the jail? Did you send for him? A. Yes, sir, my brother was living there, and I suppose he fixed the paper.

Q. Do you know what kind of a paper it was. A. No, sir, I do not. I think it was a bond for \$500.

Q. After you had come out did you go and make a further confession? A. No, sir, I did not. Major Merrill sent for me to come up to his headquarters, and I went, and he told me to report to Lieutenant Nolan on Saturday, and I did so.

Q. What took place? A. Nothing more than he told me to report to get transportation, to go down, I sup-

pose. I remained until Monday, and then came down, I got transportation from Lieutenant Nolan.

Q. Did you make any confession while in jail? A. No, sir, I had no interview after I went into jail.

Q. I understood you to say you supposed you were put in jail to keep you as a witness? A. I don't know what they put me in for; I supposed that was it, after they let me out.

Q. Were you sent for by Major Merrill or Mr. Corbin, at the time you made your confession? A. No, sir.

Q. You went voluntarily? A. I went voluntarily.

Q. Was anything promised to you in case you did make it? A. No, sir.

Q. Was that confession taken down in writing? A. I suppose it was, sir.

Q. Who by? A. I think that is the man, [pointing to Mr. L. F. Post, the stenographer.]

*Re-direct Examination.*—Q. It has been inquired of about the fires; when did they occur? A. I don't know, sir.

Q. About what time in the winter? A. I cannot tell you that.

Q. Before or after you joined the order? A. It was after I joined the order that Crosby's gin house was burned, and Mr. Castle's barn was burned the same night, after they went on this raid. At 4 o'clock the barn was found on fire; I did not see it; I saw the light of it; I saw Mr. Leach, and he said he saw the light and went to it.

Q. And that was after you had gone from the raid? A. Yes, sir.

Q. Did you whip any colored men around that place than night, at Mr. Castle's? A. Yes, sir. No, sir; they whipped one that had been at Mr. Castle's, and it was generally supposed that he done the burning.

Q. But the burning occurred after the whipping? A. Yes, sir; at 4 o'clock on the same night.

Q. When was it that these fires that have been talked about occurred, with reference to the burning; was the raiding first or the fires first? A. This fire I was speaking of was done on the 29th of January last; and we went on that raid that night, and this fire was at 4 o'clock the next morning.

Q. When was the raiding up there commenced? A. The first raiding in the country up there? The first raid that was done in our settlement was done on me.

Q. When was that? A. I don't know the date.

Q. Was it before Christmas or after? A. I think before Christmas a little while.

Q. Just before you joined the order? A. Yes, sir.

Q. Were there other raids made around there about that time? A. Yes, sir; it was not very long after that. I think they made this raid on Presley Holmes.

Q. What caution, Mr. Foster, did Major Merrill give you at the time you went to make your confession? A. I don't recollect.

Q. Before you commenced, at the time you went to make the confession, what did he say to you before you made your confession? A. He told me he wanted me to tell him the truth, and I did as far as I knew.

Q. Did he make you any promises if you told the truth? A. No, sir; he did not make any promise at all.

Q. Did he hold out any inducement? No, sir; he did not promise me anything at all.

*Re-cross Examination.*—Q. Did he say it would be better for you? A. No, sir; he didn't say anything of that kind.

Q. Was there a state of terror and alarm about that part of the country at the time among the white people? A. Yes, sir; they were arresting almost everybody.

Q. Any about the time of these raids? A. Not a great deal.

Q. But was there? A. There was some excitement.

Q. What about? A. I don't recollect what it was about. About this society.

Q. What society? A. This Ku Klux society.

Q. Was there any cause of alarm in that part of the country? A. No, sir; I did not hear of any.

Q. What time was Ellison's mill burned. A. I don't know what time.

Q. Was that in the neighborhood? A. No, sir, I don't think it is.

Q. Do you know where it is? A. I don't know where it is. I have heard of it, and about its being burned after 'twas done.

Q. When did you hear it; after the burning was done. A. I cannot tell you.

Q. After, or before you became a member of the Klan?

A. I think it was after, or probably before, I cannot tell you.

Q. Was Ellison's mill the first burning you heard? A. I don't recollect whether it was or not.

*Re-direct Examination.*—Q. Had you heard that Mr. Ellison had said that he knew that a white man had burnt his mill. A. No, sir. I did not hear that.

Osmun Gunthorpe was the fifth witness for the prosecution; he was sworn, and said:

*Direct Examination by Mr. Corbin.*—Q. Where do you reside? A. I reside in York county.

Q. How long have you lived there? A. About eighteen years, sir.

Q. State whether you joined the K. K. K., and when. A. I joined it, sir, in 1868, in the month of August; I am not certain about the date.

Q. Where? A. Down near Ebineux.

Q. In York county? A. Yes, sir.

Q. Who initiated you? A. Dr. Ebenezer Avery.

Q. Can you give us the substance of the oath you took? A. No, sir; I cannot.

Q. What was its general import, so far as you can recollect? A. I cannot recollect near all of it; that we was opposed to the Radical party; and we was to protect fellow members' widows and their households, female friends, and I believe that was about all.

Q. And what was the penalty? A. The penalty for divulging the secrets of the organization was death.

Q. What was the mode in which the purposes of the organization was to be carried out—their opposing the Radical party? A. I think it was the intention of the organization to control elections.

Q. How were they to do it? A. At that time, my understanding I had was to do it by intimidation.

Q. Did you have any order to go out and assist in that business? A. No, sir. I never received one.

Q. Did you have any notice to go to Rock Hill? A. No, sir. I received no notice, but I understood the day of election, in 1868, they were not to use any force, but by crowding the box they were to keep all from voting they could.

Q. All who? A. All of the Radical party.

Q. Who were they to keep away from the polls. A. All I understood was, they were to keep all the Radical party from voting they could, by crowding the ballot box.

Q. What did you do then? A. I never went to the election at all.

Q. What did you do in reference to the Order? A. I left it, sir.

Q. Why? A. Because I believed it was not what I thought it to be. I didn't understand, when I went in, that it was a political organization, and I saw it was, and it was on these grounds.

Q. What did you think it was before you got into it? A. I thought it was an organization for the protection of each other, but not to interfere with any other party.

Q. When you came inside of it what did you find it to be? A. I found it to be a political organization, to try to control the elections for the Democratic party, at that time.

Q. What did you conclude in reference to it, and what did you do in reference to it. A. I did nothing more.

Q. How did you get out of it? A. I got a dismissal, sir.

Q. From whom? A. Dr. Avery.

Q. How did you get it? A. I asked him for it, and he gave it to me in writing.

Q. What reason did you give him? A. I told him that I was going away, and I wanted a dismissal, and that I was not satisfied.

Q. And you received that dismissal? A. Yes, sir.

Q. Have you got it now? A. No, sir; I have not got it.

Q. Have you had anything to do with the order since? A. No, sir.

Q. Have you lived in York county since? A. Yes, sir.

Q. What part of it? A. In the southwestern portion of the county, in Cherokee township.

*Cross-Examination by Mr. Stanbery.*—Q. I understand you to say that, when you joined the order and took the oath, you had no idea it had any political significance? A. No, sir.

Q. What did you understand was the purpose of the order when you joined it? A. I understood it was an organization for the protection of each other against anything that might come up against us.

Q. What was the apprehended danger? A. There

was a general talk that there was a danger of the negroes rising.

Q. You thought it serious enough to join this order? A. I didn't know but what there might be something like it.

Q. And therefore you joined the order as an order for common protection? A. Yes, sir; that was what I understood when I joined it.

Q. And when you came into the order you took the oath in the first place? A. Yes, sir.

Q. Was that read to you? A. No, sir; it was not read to me, it was repeated to me.

Q. Have you heard this oath read here? A. Not to-night. I have heard it read.

Q. Well we will read it to you. Have you seen the oath since? A. Yes, sir. [The counsel read the oath and the witness recognized the parts in reference to the Radical party, to sickness, to females and to the death penalty.]

Q. Then, so far as I have read this oath it was the oath you have taken? A. So far as I can recollect.

Q. Well, when you heard it, were you willing to take it? A. I did take it.

Q. How long afterwards did you understand it was something else than what that oath stated? A. Not long.

Q. You didn't discover it until afterwards? A. Not until it was initiated into the order.

Q. Then you don't know at the time that there was anything illegal in it; but after you were in you understood their purpose was something different; a political purpose, and then you wanted to leave. You wanted to leave? A. Yes, sir.

Q. Now you say you understood the purpose to be political; how far political? A. They intended if they could to control the elections.

Q. You say here that they were going to the polls and keep voters away from the polls? A. That was the understanding I had, that was to be carried on at Rock Hill at the election in 1868.

Q. You spoke about the crowding around the polls and excluding them in that way? A. Yes, sir.

Q. And you understood the agreement was that no force should be used? A. Yes, sir, no force should be used.

Q. Did you ever know anything about the Union League? A. No, sir, I don't know anything about it.

Q. Whether that is a political organization or not, you don't know? A. I don't know a thing about it.

Q. Have you attended the elections in that county for some time past? A. I attended the last election, sir, last year in October.

Q. Was anybody interfered with? A. No person that I know of.

Q. Was there any crowding around the polls so as to exclude anybody? A. No, sir, not at the box I was at.

Q. Any man that had a right to vote voted without any interference? A. Yes, sir.

Q. Have you ever been at an election at Rock Hill? A. Not since then.

Q. Only that once? A. I was not at it, sir.

Q. You have never seen anybody interfered with at an election? A. I have never been at any election since last year, and nobody was interfered with at that.

Q. Were there many voters there? A. Yes, sir, a good many; I don't recollect the number.

Q. Colored and white? A. Yes, sir, there was both.

Q. And no man was interfered with whatever? A. Not that I know of.

Q. Well in that election who succeeded? A. The Radical party—well at that precinct where I voted, the Democratic party was in a large majority.

Q. Then you saw no attempt on their part to keep Republican voters away? A. No, sir; I did not see any.

Q. How does the population stand there? A. I don't know, sir; I suppose it is about three or four to one.

Q. Three or four whites to one colored? A. Yes, sir, but I am not certain, but would say three to one any how.

Q. Now at this particular election, they were to stand around the polls, you were not there? A. No, sir.

Q. What election was that? A. The Presidential election.

Q. Who told you that they were going to get around the polls? A. Mr. Cathcart.

Q. Any body else? A. No, sir; he was the one that told me.

Q. Who did he say was going? A. He didn't say. He just said that they had a meeting and agreed to do that.

Q. When did you understand, whether or not any

force or intimidation? A. No, sir; I heard nothing more, I started the next day after the election to move up to Cherokee township.

[The District Attorney here noticed that the prisoners who were included in this indictment, and who were to be used as witnesses were sitting in court, and desired their removal. They were accordingly removed.]

Q. At the time you joined the order was there a state of alarm in the neighborhood? A. None; well there was some little about negro alarm.

Q. Well about what? A. There was a talk that the negroes were up in arms and they were afraid that they would do something.

Q. Were they armed? A. I never saw any armed, but I heard that they were.

Q. There were reports that they were armed and there were fears that they would use their arms? A. Yes, sir, there was such talk.

*Re-direct Examination*—Q. Were the white men generally armed? A. They generally had arms of their own, sir.

Q. Was there any fear generally pervading the community? A. I only heard the talk; I never was alarmed.

Q. How many more white men did you say than colored men were there? A. In Cherokee Township I think about three to one.

Q. Were there any militia? A. No, sir, not in Cherokee Township.

Q. None there? A. Only the Constabulary force was up there after they commenced making the raids on said county.

Q. When was that? A. It was—I declare I cannot tell the date—but I think it was in 1870. I was up there after there were some raids made. There was a house burned in the county and several men threatened.

Q. By whom were the raids made? A. Said to be done by the Ku Klux.

Q. Any fires? A. There was a house burnt, Bill Wright's house.

Q. By whom, do you know? A. I don't know the parties.

Q. Who were accused? A. Said to be white or said to be Ku Klux.

Q. Do you know anything about the burning? A. No, sir, only that I first heard it to be done.

Q. Subsequent to that? A. There has been none done in that county since that time.

Q. That was the only house burned? A. Yes, sir.

Q. Any raid about there? A. Yes, sir, there has been raiding.

Q. When did the raiding begin after the election? A. Well, not long, sir. I don't know how long, but not very long.

Q. Did any fires precede that? A. None only what I speak of—but that was not done—there has been no burning in that county near me only that.

Q. Did the raiding after the election? A. Yes, sir.

Q. How long after? A. I cannot tell you how long, sir; not long, though.

Q. How long after the election was Tom Roundtree killed? A. He was killed on the second night in December.

Q. Last December? A. Yes, sir—this December a year ago.

Q. Who was Tom Roundtree? A. He was a black man.

Q. What position in his race? A. He occupied no position at all.

Q. What was his character? A. I never knew anything bad of the nigger.

Q. What was his politics? A. He did not meddle in politics much, I don't think. I never heard him say anything about it.

Q. What was his politics? A. He belonged to the Radical party.

Q. Who killed him, do you know? A. No, sir, I don't know.

*Re-Cross Examination*—Q. Do I understand you to say you joined that Klan because you understood it was for mutual protection? A. I understood that they were

afraid that there would be something done, and they wanted to do something to counteract it; they wanted to be ready.

Q. Were you afraid also? A. Oh! why I was afraid was this: If there was such a thing done, I might suffer with the balance. I was not afraid at the present time; but if everybody was afraid, I might be injured too.

Q. Therefore, you thought it expedient to join this Klan, for mutual protection against harm? A. Yes, sir.

Q. Then you were sufficiently alarmed? A. Well, I just looked at it in this way: If they wanted to be ready, in case of any such thing, it was no harm to be prepared.

Andy Timons, colored, was the sixth witness for the prosecution. He was sworn, and testified as follows:

*Direct Examination by Mr. Corbin*.—Q. Where do you live? A. About nine miles from York, sir; Brattons-ville, in York county.

Q. How long have you lived there? A. Seven or eight living in York county now for about eleven or eighteen years, sir.

Q. Do you know Jim Williams? A. Yes, sir; I knew him before he died; had been knowing him for some fifteen or twenty years.

Q. Was Jim Williams a resident and voter in York county? A. Yes, sir; he was.

Q. Did he vote there at the last election? A. Yes, sir; he did.

Q. Were you present at the polls? A. Yes, sir; I was manager at the polls.

Q. Did you see him vote? A. He handed me the ticket and I put it in the box.

Q. What ticket did he vote? A. He voted a Republican ticket; he was a Republican.

Q. What sort of a man was Williams? A. I did not know anything about him; he was dead last—; he was hung.

Q. Tell us the story in your own way how about it? A. It was the way I first found him; he were hanging up by the neck by a rope.

Q. Tell all the particulars you know about it; what occurred that night that he was hung; and what about him, as far as you know? A. That night, sir, I think it were something after 2 o'clock, there were three disguised men came to my house, came up cussing and swearing a great deal.

Q. Tell what they said. A. They said here we come, we are the Ku Klux. Here we come, right from hell, and two rode up on one side of my house, and one to the other. They commenced with their guns and beat at the doors, and hollering, G—d—m you, open, open the doors. I told them I would, and jumped out of bed, and before I got to the door they bursted the latch off and two came in, and one got me by the arms and says, we want your guns. I told them I didn't have any guns, there was one there, but not mine. It was turned over by some of the company. They got the gun, and asked for the accoutrements belonging to the gun, and I got them for them, and after they got these things they asked for a pistol; I told them I didn't have any pistols at that time, and then they asked if I knew where Capt. Williams lived; I told them I did; how far, they asked; I told them about two mile, I think; says he, we want to see your captain to-night; we don't want any more of you to-night; upon this they got on their horses; asked me if I knew any of them; I told them I did not know them, but they got on their horses and bid me good night; when about between fifty and one hundred yards from my house they stopped, talking very lowly to each other; I didn't know but what they were going to come back; I jumped out and made well—I started down across to the other house, and met up with Henry Haynes and Andrew Bratton; they heard them and left their houses.

Q. Were they colored men? A. Yes, sir; then we went down to Capt. Williams that night; when we got there Mrs. Williams was sitting in the door; I asked her—I called before I got to the house for Williams, and she said—

Mr. Stanbery. Never mind what she said.

Mr. Corbin. Go on and tell what she said.

The Court. No.

Q. Go on and tell what you found? A. Williams was not there.

Q What occurred there? A Then we went from there around and passed where Mr. Williams' company were, and got them and went back to John F. Bratton's, and there found a good portion of the company there.

Q What company? A Of William's company, the militia; we then followed the course which the Ku Klux had went, we tracked them then by bayonets and accoutrements, &c., they had dropped along the road, until they came to Mr. Robert Lindsay's; then we noticed a great many tracks left the road; We went on from there past Mr. Ed. Crawford's and on past Mr. Mendenhall's; The company thought that they saw horse tracks, a horse and a mule track that led into Mr. Mendenhall's lot; but Mr. Mendenhall's stables were locked. We went on from there on several tracks to Mr. Garwin's and there we found a mule which was muddy and sweating, with saddle, very fresh tracks, which we did think had come from the road, which we tracked out from the road; they tracked directly from Mr. Lindsay's; we tracked them directly from there; we then went into the Black Jacks and concluded to hunt for Williams; We went across the country to William's and before we got to the house we saw the tracks, where they had come out of the field; we pursued on until we came to where the horses were hitched, which I thought was about one hundred yards; we saw Williams hanging on a tree.

Q Was he dead? A When I found him he was dead, sir.

Q What time in the morning was that that you found him? A Sir; I think between nine and ten o'clock, sir.

Q What paper did you find on him, if any? A There was a paper on his breast. The foreman of the jury said it said "Jim Williams on his big muster."

Q How high was he hanging from the ground? A His toes were just touching the pine leaves.

Q Was he cold? A I didn't put my hands on him at that time.

Q How long did he hang there? A He hung there till, I don't think the sun was more than half an hour high that evening when he was out down; I went from there to York after the coroner; he hung there till we came back, and the jury all met.

Q Do you know whether Jim Williams voted at the last election for Mr. Wallace, as a member of Congress?

*Cross-examination by Mr. Hart.*—Q Who was Jim Williams? A He was formerly called Jas. Rainey.

Q But what was his position; what was he? A He was a Republican man.

Q But what official position did he occupy? A For labor, or what?

Q No; what official position in the government, or did he occupy any at all? A He didn't occupy any, only captain of a company.

Q Was that company armed? A Yes, sir.

Q. What with? A With Enfield rifles, or I believe that was what they called them.

Q Breech-loading rifles? Yes, sir.

Q Was ammunition served out to them? A I think they got as much as two or three balls apiece.

Q How long before the elections? A I don't recollect how long, but I think they had more than a ball apiece, or hardly that at the election; a great many had none.

Q They fired away a good deal before the election? A Yes, sir, trying their guns.

Q How many rounds were given out to them? A Never more than two or three rounds.

Q You were Lieutenant in that company? A No, sir, I was not.

Q You never was? A No, sir.

Q Were you an officer in the militia? A I was clerk of the company, sir.

Q Did you issue the ammunition to the members of the company? A I did not sir; I didn't belong to the company at that time. I was with it a great deal, but did not belong at that time.

Q Had there been any raids made in that community previous to the October election? A Before that?

Q Yes. A No, sir, not there.

Q Had there been none? A No, sir.

Q You went to the election in October, 1870? A Yes, sir, I did.

Q Where did you vote? A I voted at McConnellsville.

Q Did this militia company go there to vote? A Yes, sir.

Q Did they carry their side-arms? A They didn't carry any guns there at all.

Q How far from there did they leave their guns? A About three or four miles, sir? about three any how.

Q How many of them left their guns at Sheek's, a short distance from there? A Well if there was any left it was more than I know.

Q Was there a meeting of that company the night before the election? A There was a meeting in advance of the election.

Q Were the members of that company ordered to carry their side-arms or not? A That was not the order to carry them.

Q But an agreement to carry them? A The agreement was that no one should carry any arms.

Q Well they did carry their side-arms, their bayonets, etc? A Some of them I think did; yes, sir, some of them did. There was a great many arms there.

Q Were you a member of the company at the time Mr. Mendenhall was arrested? A I was not, sir. I was not a member of the company until after the arms were drawn.

Q Did you know of it, that Mr. Robert Mendenhall was arrested by order of the captain? A I does not as a matter of fact; I was not there.

Q How long was he kept under arrest, according to the report?

Mr. Corbin. That won't do.

The Court. That won't do.

Q You were not there when that occurred?

Mr. Corbin. What occurred?

Mr. Hart. Mr. Mendenhall. A No sir, I was not there.

Q How often did this company meet to drill last fall and winter? A Well, sometimes every two weeks, and sometimes every Saturday evening.

Q Squads of this company were frequently upon the field, and drilling around? A Well, I never saw them at that.

Mr. Corbin. If the Court please, we cannot see the relevancy of this sort of business.

The Court. We cannot see the relevancy of it ourselves.

Mr. Hart. The relevancy is this—

Mr. Corbin. Go on; we won't interfere with you.

Q Do you say that squads were out? A I say they were not to my knowledge.

Q The company were not firing guns then at night to your knowledge? A I have heard guns fired at night sometimes. I don't know whether it was them guns or not.

Q Did you meet members of this company at night with their arms traversing the country. A



There was a great talk of K. K. coming there. I did see some of them there with their guns.

Q But no Ku Klux had been there. A They had not been then, but it was heavily threatened. Never saw them though on the by-road.

Q How did you know that the Ku Klux were coming there? A It was generally reported that they were coming.

Q Who told you; tell me somebody? A It was just the settlement talk; there was talk of it around.

Q Do you know that there was any uneasiness felt in that county on account of those guns being fired at night? A The gentlemen of that country told me that they were not uneasy about the guns.

Q Do you know that there was any uneasiness from other parties? A I don't know, sir, for I don't think that there was any danger in it myself.

Q You don't think so? A No, sir, I don't.

Q You did not feel uneasy from it? A I did not, and I did not think there was any reason for uneasiness; for any one feeling it.

Q Do you know whether Jim Williams, your captain, had any communication with Mr. Ed. Rose, at Yorkville, or not? A I never heard any myself, sir.

Q Now I am coming to a point. You will, perhaps, recollect I called your attention to a conversation you had with myself in my office. On that occasion, do you recollect your captain, Jim Williams, saying Mr. Rose had given him some instructions what to do about burning houses? A I did hear that reported.

Q You did hear that? A I heard it reported.

Q How long was that before this hanging took place? A It was some time beforehand, sir.

Q What were those instructions? A Well if the Ku Klux got to killing and was killing, after, the black people as well as I understood it, it were then for to burn the houses.

Q You heard that from Mr. Williams? A I heard it reported from others.

Q You heard it from him also? A I did not hear it myself.

Q You heard the report that he gave instructions? A I heard that.

Q What office did Mr. Rose hold? A He was a tax collector, as far as I know.

Q County Treasurer? A Yes, sir.

Q What was his politics? A He was a Republican, so I was told.

Q Did you hear them mention it at any meeting of the company? A I did not, sir.

Q When you went down to see John Bratton, you found part of Jim's company there at Mr. Bratton's? A Yes, sir.

Q With their arms? A Some of them had; the Ku Klux had taken a good many.

Q Where did they come from? A At the plantation there was a good many.

Q Mr. Bratton's plantation? A Yes, sir, in fact all that were there lived on his land, or about it.

Q Did you ever hear such an expression as this, coming from Jim Rainey, "that every time he heard of any Ku Klux being in the county he was instructed to burn a house."

Q Did you ever hear this? "That if his party did not carry the last election, he expected to use up the country, or expressions of that sort?" A I never heard him say that; I never heard him say it, or never heard of him saying it.

Q Did you ever hear an expression from himself of this kind; that, if his party failed, he expected to kill from the cradle to the grave? A I heard that man, Ed. Crawford, the night he was hung; the night he came on me for the guns he told me that.

Mr. Corbin. What raid was that? A When they came to take the Scott guns.

Mr. Corbin. How long after the murder? A The third night afterwards; he said he expected Jim was killing from the cradle up now.

Q You say you voted at McConnellsville? A Yes, sir, I did.

Q Did anybody try to interfere with you from voting; or did anybody try to interfere with Jim Williams for voting? A Not that I know of.

Q You saw him vote; nobody attempted to interfere with him; there was no disturbance that day? A No, sir; there was not on that day; they was prepared for a large one though, but it did not come on.

Q Who was prepared? A The Conservative party came there armed.

Q Did you see their arms? A I did, sir; I saw a great many of them.

Q The colored people carried their side arms, their bayonets? A Yes, sir.

Q And yet no disturbance occurred? A There was no disturbance that day; the election went off very pretty.

Q You say these guns had been put into the hands of your company: How long before this election? A They received the guns on the 16th day of August. The election occurred about the 19th of October; wasn't it about two months afterwards? I think so, sir.

Q Your company then met to drill previous to the election? A Well they had drilled right smart.

Q Drilled twice a week previous to the election didn't they? A No, sir. They drilled every Saturday awhile and every two weeks and so on.

Q After the election you didn't drill so often? A They drilled all the time on until towards Christmas.

Q After the election it began to slacken off? A Well they drilled on for sometime; along two or three weeks before Christmas, they didn't drill any.

*Re-direct Examination.*—Q Where is Ned Crawford now? A I have not saw him for a great many—for several weeks before I left home.

Q What has become of him; do you know? A They said he left the county.

Q When did he leave; do you know? A Well I does not exactly; I saw him I think about a few days before they began arresting in Yorkville.

Q Have not seen him since? A No, sir.

Q How far does he live from you? A Between two and three miles, sir.

Q How long did he reside in York county? A He had been there then about eighteen years, probably longer.

Q White or colored? A He was a colored man, sir.

Q You were manager at the election I understand? A Yes, sir.

Q When Jim Williams came to vote? A Yes, sir.

Q Did you regard him as a qualified voter? A Yes, sir, I did.

Q Did he swear to his qualification? A Yes, sir, he did.

Q And you allowed him to vote. A Yes, sir, I did.

*Re-cross Examination by Mr. Stanbery.*—

Q This military company—was it for it the arms were brought there? Yes, sir.

Q Tell us how many were in the company, you think? A There was about 90.

Q All colored men? A Yes, sir.

Q And the captain of your company? was this Williams? A Yes, sir.

Q Who gave you these arms? A Well I don't know sir, he gave them himself.

Q You had got a musket, hadn't you? A I had not sir, I only had —

Q Had each one of the companies a musket or rifle? A I don't know what you call them.

Q Where did those arms come from? A They were said to be sent to the company by the Governor; that was what was said, I don't know; I did not see the papers.

Q And those balls and those cartridges? A I cannot give any account of them whatsoever.

Q And this powder as well as balls all ready made? A There was nothing only balls already made and fixed.

Q Fixed ammunition? A Yes, sir.

Q That is, you mean cartridge, ball and powder together? A Yes, sir.

Q And three cartridges you understood? A Well some got three and some got two.

Q Was it necessary in your drilling to have that ammunition? A They did not drill with it as I know of.

Q What was the ammunition for? A I never imagined anything about what it was for.

Q Who were these cartridges to be discharged against? A No person, to my knowledge.

Q What did they want with them? A I don't know.

Mr. Corbin. I would like to know if he is to be interrogated; as a military expert I want to know the object of this examination.

Q Was there any white company in that neighborhood furnished with the same sort of arms? A No; there was none furnished with the same sort of guns; there was one raised, and the captain said he asked Scott for guns, but he didn't get them, and, of course, it insulted his company, he said.

Q But you don't know of any white company getting guns? A No, sir.

Q None but your company got guns? No, sir, I didn't say that; some of the companies got guns; one in York and one in Rock Hill.

Q Were they white or colored people? A Colored people.

Q Were they furnished with the ammunition too? A I don't know anything about that.

Mr. Corbin. If the Court please, there is no end to this testimony.

The Court. How does this tend to show the issue here.

Mr. Stanbery. If the Court please, the purpose is to show the whole intent of the purpose.

The Court. This was all subsequent to the formation of the conspiracy.

Mr. Stanbery. It was not subsequent to the overt act; it was prior to that time, and we want to show that the overt act was connected, not with the voting matter, but with this arming matter and the danger apprehended.

The Court. Well, the overt act has nothing to do with it. That conspiracy may have done a great many things besides that overt act. It is a question of conspiracy, and it can hardly be evidence either to rebut the evidence of the United States or to support the plea of not guilty, "that a militia company had been formed after the formation of the conspiracy."

Mr. Stanbery. Why if the court please, I understand that the only reason why your honors allow this testimony to go on is that it is an act in pursuance of the conspiracy, an overt act.

The Court. What, the arming of a militia company?

Mr. Stanbery. No, this hanging of Rainey. Your honors allowed them to give testimony as to that;

it must have some relevancy to the conspiracy or it means nothing. It is an independent murder, they have not yet shown that it was connected with the conspiracy; we want to show that there was a totally different intent from that of preventing voting, that the cause of the hanging of Rainey was owing to the negroes having been armed and to the threatenings made by Rainey, the captain of the company. We expect to show that he was a very dangerous man, and had been furnished with arms and ammunition, and that he had made threats over the county, of what he was going to do with the white people.

The Court. Well are you done with the witness?

Re-Direct Examination.—Q What was the date of that murder? A It was on the first Monday in March, I don't remember the date.

Q Last March? A Yes, sir.

TESTIMONY OF GADSDEN STEEL, COLORED.

Gadsden Steel was the seventh witness called, on the part of the prosecution. He was sworn and testified as follows:

Direct Examination by Mr. Corbin.—Q Where do you live? A In North Carolina.

Q Where did you live last spring, in March? A Near Yorkville and McConnellsville, York county.

Q How long had you lived in York county, prior to that time? A Until about the middle of April. I moved to North Carolina about the middle of April.

Q How long had you lived in York county before you moved to North Carolina? A Until that time, all my life.

Q Were you a voter in York county? A Yes, sir.

Q Vote at the last election? A Yes, sir.

Q Are you twenty-one years of age? A Twenty-six.

Q What ticket did you vote? A Voted the Radical ticket.

Q Vote for Mr. Wallace? A Yes, sir.

Q Now tell the jury about the Ku Klux coming to your house last March, on the night that Jim Williams was killed; what they said and did and what you said and all about it? A They came to my house on a Monday night.

Q What Monday night was that? I Don't exactly know what day of the month it was.

Q Well, sales day in March? A No, sir, I don't exactly know.

Q Which Monday? A It was on a Monday night; I don't know what day of the month it was.

Q The first or third? I don't know exactly whether it was the first or third; I cannot exactly tell.

Q Very well, tell what occurred? A They came to my house about ten o'clock and I was in bed at that time and I was asleep and my wife she heard them before I did, and she shook me and woke me up and told me she heard a mighty riding and walking, and said I had better get up, she thought it was Ku Klux. I jumped up and put on my pantaloons and I stepped to the door and looked out, and very close to the door I seen the men and I stepped right back into the house so when they knocked the door opened they couldn't see me, and they came in and called for me to give up my gun and I says I has no gun, and when I spoke they all grabbed me and taken me out into the yard.

Q What sort of looking people where they? A They was all disguised, as far as I could see, they was all disguised, and struck me three licks over the head, and jobbed the blood out of me, right for'ninst my eye, with a pistol, and down by my mouth

here, [indicating] and four of them walked around to Mr. Moore's, and, when they started off, one touched the other and said let's go around and see this man, and then the crowd that had me taken me to Mr. Moore's and asked Mr. Moore if I had a gun, and he said no, not that he knew of, and they asked if I had a pistol, and he said no; they asked if I belonged to that company; he said no.

Q What company? A Jim Williams' company; asked him was I a bad boy and run about into any devilment; he said no, I was a very fine boy, as far as he knew; they asked how I voted; he said I voted the Radical ticket; they says, "there, G—d—n you, I'll kill you for that;" they took me on out in the lane, and says "come out and talk to No. 6;" they locked arms with me, and one took me by the collar and put a gun agin me and marched me out to No. 6; when I went out there he was sitting on his horse; I walked up to him; he bowed his head down to me [illustrating with a very low bow] and says "how do you do," and horned me in the breast with his horns; had horns on the head about so long [indicating about two feet]; I jumped back from him, and they punched me, and said "stand up to him, G—d—n you, and talk to him;" I told them I would do so; he told me that he wanted me to tell him who had guns.

Q Who said that? A No. 6; I told him I knew a heap that had guns, but hadn't them now; they had done give them up; well, says he, ain't Jim Williams got the guns? I says I heard folks say that he has them, but I do not know whether he has them or not; then he says to me: We want you to go and show us the way to Jim Williams' house; says I: I have never been there since he built on that road; says they: We want you to go and show us to where his house is; if you don't show us to where his house is, we will kill you; and then one looked up to the moon and says: Don't tarry here too long with this d—n nigger; we have to get back to hell before daybreak. It won't do to tarry here too long. Says he: get on; there was a man standing to the right of me with his head; his head was turned from me; I stepped around and got on behind him, and rode on around until they turned towards the school house, about sixty yards down the road, and he ask me did I want to go, and I told no, says I, the fix that I am in, if you don't do anything to me, may kill me. I hadn't nothing on but a shirt, pantalons and drawers. They started in a lope then, and he hollowed to me that he could not keep up, that I was too heavy; says he, this God damn nigger is too heavy; No. 6 hollows back to him, let him down, and he rode close enough to the fence so that I could get down, and I stepped off; says he, you go home and go to bed, and if you are not there when we come along we will kill you the next time we call on you; we are going on to kill Williams, and are going to kill all these damn niggers that votes the radical ticket; run, God damn you, run; I ran into the yard, and I heard somebody talking near the store, and I slipped up beside the palings, and it was Dr. Love and Andy Linsey talking, and Love seen me, and says Gadsden did they hurt you; no says I, not much, they punched the blood out in two places, and knocked me two or three times about the head, but they did not hurt me very much; says he, you go to bed and I don't think they will trouble you very much. I went home and put on my clothes and goes up to the mill to get the other boys out of the way, for fear they might go on them, but they were out, and the others were lying in bed, and I waked the others up, and we all went out into the old field and laid there until the chickens

crowed for day, and went back to Mr. Moore's, near the house, and lay there till clear day-light, and I goes into the yard there, and Mr. Moore came to me and looked over my face and seen where they had punched the blood out of me, and says then for me to go on to my work and make myself easy, that they should not come and bother me any more; I never seen any more of them after that.

Q Now, what time the next day did you learn that Jim Williams was dead? A It was about 8 o'clock when I heard of it.

Q Did you go down near him? A No, sir, I didn't go. I was busy employed and didn't go. I didn't quit my work to go. I was working at the mill, and some come there to the mill very early that morning and told it.

Q Told you what? A Well, they didn't tell me, but they told Mr. Dover and Mr. Guthrie that he was killed.

Q Who? A I don't know who it was that said it was Jim Williams. They said he was killed, but the man that said it I didn't know. They was white men.

Q Jim Williams was killed that night, was he? A Yes, sir, he was killed that night.

Q Repeat, if you please, what that man told you when he let you go off from the horse, what they said to you? A When they let me off the horse they say: You go home and go to bed, and if you are not there in the morning when we come along, the next time we call you we will kill you. We are going to kill all you d—n niggers that vote these Radical tickets. We are going to kill Jim, and are going to kill all these d—n niggers that vote the Radical ticket. The man that I was riding behind; he was the one that talked to me.

Cross-examined by Mr. Stanbery.—Q When they came to your house they inquired about your gun? A Yes, sir.

Q You told them you had no gun? A Yes, sir.

Q Had you belonged to the company before? A No, sir; I had not belonged to the company, I worked on the railroad and had no time.

Q This man then wanted you to tell them where Jim Williams lived and wanted you to go as a guide? A They wanted me to tell them who had the guns, before they asked me where Williams was, and then after I told them that I knew who had guns, but didn't have them now, they wanted me to direct them the way to Williams' house; I told them that I heard that Williams had guns but I could not swear that he did have them.

Q Was that before they asked for Williams' house or afterwards? A I told them afterwards.

Q What did they ask you? A They asked me did he have the guns; I told them I didn't know, I heard folks say so, and then they wanted me to go with them.

Q How far did he live from you? A About three miles.

Q On a main road? A Well it was across the country, between two roads.

Q Did he live on a road? A I does not know whether he lived on the side of the road or not.

Q You heard anybody speak about voting except this man that had you on his horse? A That had me behind him; he spoke to me about it, after he let me down.

Q His horse didn't keep up? A No, sir; he said I was too heavy; these two was the hindmost men.

Q What? A The man that I was riding behind, and the one that was beside him.

Q And the man you was riding behind made this remark to you? A Yes, sir; and then they both told me to run.

*Re-direct examination by Mr. Corbin.*—Q Did I understand you to say that No. 6 asked about your voting; who was it asked you at Mr. Moore's? A They asked Mr. Moore what ticket I voted, and Mr. Moore told them that I voted the Radical ticket, and says he, that man what was there, says, there God damn you, we will kill you for that. That was voting the Radical ticket, and then says to me come out and talk to No. 6, and when I went out to talk to No. 6, he asked me who had the guns; I know a heap that have had them, but hadn't them now.

Q The conversation was altogether about the guns, and not about voting? A Yes, sir, he asked about the guns and about Williams?

TESTIMONY OF MRS. ROSY WILLIAMS.

Mrs. Rosy Williams, (colored,) widow of Jim Williams, was the eighth witness called for the prosecution; she was sworn, and testified as follows:

*Direct examination by Mr. Corbin.*—Q Are you the wife of Jim Williams? A Yes, sir.

Q Where do you live? Where did you live, when Jim Williams was living? A On Bratton's place.

Q In what county, York county? A Yes, sir.

Q When was Jim Williams killed, your husband? A The 7th of March.

Q Tell the Court and jury all about it, all you know about it? A They came to my house about 2 o'clock in the night; came in the house and called him.

Q Who came? A Disguised men. I can't tell who it was. I don't know any of them.

Q What do you call them? A I call them Ku Klux.

Q How many came? A I don't know how many there was.

Q How many do you think? A I reckon about nine or ten came into the house, as nigh as I can guess it.

Q What did they do? A He went under the house before they came, and after they came in he came up in the house and gave them the guns; there were but two in the house, and then they asked him for the others, and cussed, and told him to come out. He told them he had never had any of the guns. Hewent with them, and after they had took him out doors they came in the house after me and said there were some guns hid. I told them there was not, and after I told them that they went out, and after they had went out there I heard him make a fuss like he was strangling.

Q Who? A. Williams. Then I went to the door and pulled the door open and allowed to go down and beg them not to hurt him. They told me not to go out there. Well, I didn't go out. Then they told me to shut the door and take my children and go to bed. I shut the door, but didn't go to bed. I looked out of the crack after them until they got under the shadows of the trees. I couldn't see them then.

Q Did they take Jim Williams? A. Yes, sir; but I couldn't tell him from the rest.

Q. Was that the last you ever saw him alive? A. Yes, sir.

Q. Or did you see him again? A. No, sir. The next morning I went and looked for him but I didn't find him. I was scared too. Then I went for my people to get some one to go help me look for him; and I met an old man who told me they had found him, and said he was dead. They had hung him; but I didn't go out there until 12 o'clock.

Q Did you go out there then? Did you see him? A. Yes, sir.

Q. What was his condition? A. He was hung on a pine tree.

Q. With a rope around his neck? A. Yes, sir.

Q. Dead? A. Yes, sir, he was dead.

Mr. Corbin. (To Mr. Stanbery.) You may cross-examine him.

*Cross Examination by Mr. Stanbery.*—Q Do you say when they came in; did they ask you for the guns before your husband came? A No, sir; asked where he was at first; they asked me about that after they took him out there.

Q When he came in, they asked him for what guns he had? A Yes, sir.

Q Very well, and did he produce the guns? A Yes, sir; he gave them to him.

Q Two guns? A Yes, sir.

Q And accouterment? A There was nothing else there except one bayonet, and they got that.

Q And did they take him out at that time? A Yes, sir.

Q How long after that, was it, that they came in to look further about them? A Well, it was not long.

Q What did they ask you then? A They told me to get the guns, there was more there.

Q What did you tell them? A I told them there was not any but what they had got.

Q Then they asked about the pistol? A Yes, sir; I told them we didn't have any; we had about one, but we carried that back home.

Q How many were in the house at the time they went in? A Nobody but Dave Black, that night.

Q I want to know of these men in disguise how many come in? A About six or seven, I reckon came in the house.

Q The first time or the second? A Did not more than three or four the last time.

Q Not so many the last time as the first time? A No, sir; I cannot tell how many there was, because I was scared, because I thought they was going to kill me too.

Q You did not know who they were; Did you know that your husband was captain of that company? A Yes, sir.

Q Did you know of his going down to Chester for any thing; how far is that from where you live? A Some ten or eleven miles I reckon.

Q Don't know what he went down there for? A He went down there one Sunday to see about getting these guns.

Q Who did he go to see? A Mr. Rice, I believe.

Q Were you at home when he came back? A Yes, sir.

What did he bring back from Chester? Does Rice keep a store there? A I don't know. I don't know him.

Q Do you know whether Rice has anything to do with those colored companies? A I don't know; can't tell you anything about them.

Q Do you know, whether or not, that Rice keeps any ammunition? A I don't know, sir; don't know anything about them there.

Q Did you never see any of the ammunition? A Yes, sir.

Q Where did you see it? A Jim had some.

Q Where did Williams get it? A He got it at York.

Q Who from? A I don't know.

Q How do you know he got it at York? A He said so.

Q Did he bring home any? A Brought it home in a little paper box.

Q What was in the box? A Minnie balls, they call them.

Q What number; were those just separate bullets? A They had some nine or ten, just a little small box.

Q Nine or ten minnie balls, as they called them? A Yes, sir.

Mr. Corbin. She didn't see them; I don't see the relevancy in all this.

Mr. Stanbery. You don't see the relevancy of anything we ask.

Mr. Corbin. I think it would trouble you to see it.

Q Was that the only ammunition you have seen him to bring to your house? A Yes, sir; that is all he brought there.

Q What did he do with that which he did bring? A Gave them out to his men in his company.

Q Do you say he gave them to his men? A Some came there and got them.

Q How many did he give to them? A Gave them all two a piece there.

Q Did he give them any powder at the same time? A Never had no powder.

Q Nothing but balls? A Yes, sir.

Q Were those balls in what they call cartridges, or were they just balls? A Called them cartridge balls; they had caps on them.

Q You say he gave two of these to each man of the company? A Yes, sir.

Q Was it just two or did he give any more than two? A He gave more but gave them where they mustered at.

Q How long before he was hung was it that he gave these balls out? A When they first got them, a long time.

Q How often did he muster about that time? A When they did muster, mustered sometimes every two weeks and sometimes every three weeks.

Q Where was the place they mustered? A I cannot tell exactly the place, because I was never up there when they was mustered.

*Re-Direct Examination.*—Q How long before the election, do you remember did he give those cartridges, or how long after he got the gun did he get the cartridges? A I don't know exactly how long.

Q Was it a long time? A It was a good while.

Q Long time before the election? A A good while, I cannot tell you how long, because I don't know.

Q Did he give any cartridges after they had stopped mustering? A No, sir.

Q When did they stop mustering? A Good while before Christmas.

*Re-Cross Examination.*—Q Did you ever hear Williams say that he had been ordered to return those guns? A Yes, sir; heard him say they wanted him to give them up, but he said he didn't allow to do it.

Q Who did he say ordered him to return the guns? A He didn't say; they had a meeting up the road somewhere, one day, and they went up there.

Q And when he came home he said he was ordered to turn over the guns? A Yes, sir; and he didn't allow to do it, without Governor Scott gave the orders.

Q Did he say who had given him orders? A I don't know the man.

Q Would you know the name?

Mr. Corbin. We think if it please the court, that if this is material at all, they must prove it in a proper way.

Mr. Stanbery. That is the proper way to do it.

Mr. Corbin. No, sir; that is all heere say; every word of it.

The witness was here discharged, and the court at 10:30 P. M., adjourned.

## TWELFTH DAY'S PROCEEDINGS, DECEMBER 13.

The court met pursuant to adjournment, Hon. Hugh L. Bond presiding Judge, Hon. Geo. Bryan, District Judge, Associate.

Mr. Wilson applied for bail for John Miller, now in jail for conspiracy.

Mr. Corbin said it was an unusual case, and the bail ought to be at least \$5000. Robert Miller, E. M. Campbell and Geo. Steele were accepted as sureties in a bond for \$5000.

### TESTIMONY OF HIRAM LITTLEJOHN.

Hiram Littlejohn being sworn, testified as follows:

*Examination in chief by Mr. Corbin.* Q Where do you live? A Yorkville creek.

Q Where did you live last spring? A I lived at the same district, between York and Chester road.

Q State whether the Ku Klux came to see you, and what time, what they said and what they did.

Mr. Johnson. We object. It has not been shown that the defendant has been in any way connected with the conspiracy.

Court. You have first to show that there has been a conspiracy before you can show that anybody was connected with it.

Mr. Stanbery. We made no objection while they were attempting to show a conspiracy; but now they are attempting to show acts done in a conspiracy before showing that the defendant participated in those acts.

Court. His connection will be shown in the progress of the trial.

Mr. Stanbery. That may keep us here forever without getting to our client at all; they cannot go into these overt acts to which we are not parties.

Court. That has to be proved.

Mr. Johnson. Can they go into the acts of other parties before we have been proved to be one of the conspirators.

Court. They are seeking to establish the conspiracy by the acts of these parties in disguise.

Mr. Johnson. I wish to bring before the court what I believe to be the law. Before a party can be charged at all with any acts alleging conspiracy, it must be proved that he was one of the conspirators. You might as well go into the evidence of any other conspiracy. I understand they have a long list of a thousand or more conspirators, and it is not for us to say here, while they prove what "A," "B" and "C" said, in order to affect our client in the absence of any positive proof that he knew anything of the conspiracy. It is calculated to influence the jury, and must influence the jury more or less. What they offer has nothing to do with the conspiracy till they have offered evidence to show that we are one of the parties. The rule is, that before any evidence can be given of the acts or declarations of any supposed conspirator in a conspiracy, in order to affect the party under trial, it must be proved that he is one of the band of conspirators.

Mr. Corbin. The counsel has occupied the time of the court in arguing a question that I supposed was among the first principles of evidence and known to everybody. I beg to call attention of the Court to 2 Russell, pp. 700, to show that we are entitled to the evidence asked for. [Mr. Corbin here read the passage referred to.]

Mr. Stanbery. I understand the rule to be that you can begin at either end, so that it be to establish the conspiracy and involve the defendant in it. And it is generally done under the assurance that he will connect the defendant with it; but with or without that assertion on the part of the prosecutor, I admit that he can begin by proving a conspiracy. Afterwards, when he has proved the conspiracy, made it out as he claims to have done, yet not having implicated the defendant, shown him present or agreeing to the conspiracy, yet they now attempt to go into all that was done by the conspirators that are proved to have been engaged in it. All their raids are to be gone into, and as yet they do not bring the defendant into them at all, or show that he was one of the leaders, or that he knew anything about the raid. The prosecuting attorney must connect him with the conspiracy outside of the independent acts of these parties or their declarations.

The Court. We think the evidence asked for strictly permissible.

Q. State whether the parties in disguise, called Ku Klux, came to visit you last March; what they said and what they did? A. They came in and stood about the door, then opened the door.

Q. Who came in? A. I don't know who they were; they were in disguise. Two came in.

Q. How did they look? A. I do not know how they looked; they were pretty much white.

Q. What kind of disguises had they on? A. They were white all over and had horns about their ears.

Q. What did they say to you? A. When they came up, they said: "Have you any guns here." Said I: "We have got a double-barrel shot gun." "Hand it down here," said they; "we have hung Jim Williams to-night; we intend to rule this country or die." Said he: "I am a Radical man. Next time you go to vote, you vote the Democratic ticket, you hear."

Q. Did they leave you then? A. They went off with the gun.

Q. What time in the night was that? A. It was before daylight, but I don't know the time.

Q. Did they take your gun? A. Yes, sir; they did.

Q. Did you hear that Jim Williams had been killed? A. I only heard from what they said.

Q. Did you hear next day that Jim Williams had been killed? A. Oh, yes, sir! Of course I heard it next day.

Q. Do you know the fact that he had been killed? A. Only from what I heard; I heard several say so; I heard my folks talking about it.

Q. When was this? Was it some time in March? A. I do not know.

Q. Do you know what time sale day is? A. It is generally the first Monday in March.

Q. Do you know if it was that night? A. No, sir; I did not pay any attention to what day of the month it was.

Q. Did you see Andy Tim? Yes, sir; he came down, he and Pete Bratton.

Q. Where were they going? A. He came and inquired if the K. K. had been there.

Q. Where did the Ku Klux go to? Which direction did they take when they left you that night? A. They went up toward York.

Q. Which direction did they come from? A. They came from the direction where they had hung Jim Williams.

No cross-examination.

#### TESTIMONY OF JOHN CALDWELL.

John Caldwell was the next witness called, who being duly sworn, testified as follows:

*Direct Examination, by Mr. Corbin.*—Q. What is your name? A. John Caldwell.

Mr. Johnson objected to the witness's testimony, in consequence of his having been present in court yesterday, contrary to the orders of the court.

Mr. Corbin explained that he was a prisoner in the custody of the Marshal, and was ignorant of the order of the court.

The court allowed his testimony to be received.

Q. How long have you resided in York county? A. Twenty-seven years. I was born and raised there.

Q. How old are you? A. About twenty-seven years.

Q. In what portion of York county do you reside? A. In the western portion.

Q. Have you ever been a member of the Ku Klux organization in York county? A. Yes, sir, I have.

Q. When did you join the order? A. In 1868.

Q. Where was that? A. At Yorkville.

Q. Who initiated you? A. Major J. W. Avery.

Q. What was his relation to the order at that time? A. He just came to me and asked me to walk up to his store. He took me into a room, and said he wanted me to join an order. I asked him what he was getting it up for. He said it was in self defense.

Q. Were you initiated by him then? Did he administer the oath? Can you tell us about what that oath was? A. I cannot remember.

Q. Can you tell us the substance of it? A. Only the last portion of it.

Q. What was that? A. I understood that any person who divulged the secrets of the organization, should "suffer death, death, death."

Q. Do you think you would recognize the oath were you to hear it again? A. No, sir, only that portion of it.

Q. Who was Major Avery? A. He is a citizen of Yorkville.

Q. What was his office in the order? A. At that time, I do not know.

Q. Did you know at any time since? A. Yes, sir, I knew he was the chief of that county.

Q. How do you know it? A. I was present when he was appointed.

Q. Where was he appointed, and when? A. It was some length of time after I was taken into the order.

Q. Was that before or after the election of the fall of 1868? A. He was made chief after the election.

Q. Where was that election held at which he was made chief? A. In Bratton & Mason's store, up in the third story.

Q. How many of the order were present? A. There were a good many; I do not know how many.

Q. Do you know the defendant now present, Robert Hayes Mitchell? A. Yes, sir.

Q. Is he a member of the Ku Klux organization? A. Yes, sir, I suppose he is; I don't know; I never saw him initiated.

Q. Have you recognized him as a member of the order? A. Yes, sir, I have.

Q. Where was that? A. Along the road when we were on our way to Jim Williams'.

Q. Did you see him with the party that night? A. Yes, sir.

Q. Where did you first see him? A. About four miles from York, on the Pinckney road.

Q. Did you have any conversation with him? A. I had no conversation with him at all, I just saw him.

Q. Did you speak with him? A. No, sir, I don't think I did.

Q. Which way was he going? A. He was on the road then; there were some six or seven men in the party that I met on the road.

Q. Was he with the crowd? A. Yes, sir.

Q. Commence at the beginning and describe the raid on Jim Williams'; when you got the order to go; where you went to muster; who took command of the men, and what road you traveled; what you did when you got to Jim Williams' house, and all about the matter? A. The first I heard of it was at Yorkville; I was told there by Dr. Bratton, that they were going down to McConnellsville; I asked him what he was going after; he said he was going for some guns; he asked me if I would go, and I said I would have nothing to do with it; I had never been on a raid; he asked me the name of the chief man in our county; I told him I understood it was Wm. Johnson or Alonzo Brown, was the leading man in our county.

Q. Do you mean in your portion of the county? A. Yes, sir.

Q. Go on and tell all you know. A. Johnson came to me, and told me to meet him at the muster patch; That was Wm. Johnson.

Q. What is his relation to the order? A. He was chief.

Q. Of what Klan? A. Of the Rattlesnake Klan. I went out to the muster ground that night; it is called the "Briar Patch"; I met several men there; I do not know that I could call them over; I have a memorandum of them here written down.

Mr. Johnson. When was that memorandum made? A. It was made since I came down here.

Mr. Johnson. That won't do.

Mr. Corbin. Did you make that memorandum yourself? A. Yes, sir. I made one; I did not make this.

Q. Is not that the memorandum of the name you gave? A. Yes, sir, except the name of one man.

Mr. Johnson. We object to the testimony. What is that list? A. I made the list of the names myself, and this is the copy of it.

The Court. You may name them from your recollection.

A. I met Wm. Johnson and Harvey Gunning, Chas. Brown, Holbrook Good, James Nell, Sam Ferguson, Richard Caldwell, Pinckney Caldwell. I don't remember the others, but there were more men than these there.



Q. Was that the crowd you found at the "Brirar Patch. Did others come there? A. Dr. Bratton came there, and Lindsay Brown, and Rufus McClain.

Q. Did you know any of the others? A. No, sir. There were some men there, but I don't remember them.

Q. Did any more come to that place after that. A. Not at that place.

Q. Who took command of the crowd? A. Johnson was chief of that party when we started from the "Brirar patch."

Q. Tell us where you went and who you met on the road? A. We went across the Pinckney road, about three miles.

Q. Did you put on your disguise at the Brirar patch? A. Yes, sir.

Q. What sort of disguises are they? A. Most of them wore black gowns with heads and false faces.

Q. What sort of heads were they? A. They were made out of black cloth, or dark cloth.

Q. How were they ornamented? A. Some had horns, and some had not.

Q. Had you horses there? A. Yes, sir.

Q. Were the men armed? A. No, sir. I don't believe I saw a gun in the party.

Q. Had they pistols? A. I didn't see any pistols.

Q. New tell us where they went. A. We went down to the Pinckney road and there we met another party of men.

Q. How far was it before you crossed the Pinckney Road? A. About three and a half miles above Squire A. S. Wallace's, the Member of Congress.

Q. Who did you meet there? A. We met the four Shearer boys, Robert Hayes Mitchell (this man here) and Elias Ramsay. I don't remember any more, but there were more men there.

Q. What did they do there? A. We stopped then and there were four men initiated there.

Q. Who were they? A. They were the four Shearer boys.

Q. Can you give their names? A. James, William, Sybancus and Hugh Shearer.

Q. Who swore them? A. I don't know.

Q. After they were initiated what was done? A. We started in the direction of McConellsville.

Q. Who was in command of the party? A. Bratton was at the head of the party; he was riding in front.

Q. What Bratton was that? A. Dr. J. Rufus Bratton, of Yorkville.

Q. Go on with what you had to say? A. We went on then to McConellsville, and about 200 or 300 yards from there we halted; and they said there were some guns down at that place, and they sent a party to search and get them. A man then came from the party that went forward, and said bring up the horses; and they took them down. They said there was a gun at Mr. Moore's, and they went up there for a black man, but I don't know who he was.

Q. At whose place was this? A. They said it was Mr. Moore's place.

Q. What did they do with the black man? A. They asked him about Jim Williams; how far away he lived. They asked him if he knew if Williams had any guns; he said he thought there were twelve or fifteen guns there. Then they took this black masked man and mounted him on a horse or mule and carried him a piece, then they halted and turned the black man loose and he went back home. Then they went on from there about three miles and stopped in a thicket, and a party of ten went off—I don't know whether there were more than ten—and were gone probably an hour.

Q. Can you describe the place? A. It was in an old piney thicket on the side of a hill.

Q. What did you do? A. I remained there with the horses. I was not well, and I just remained there with the horses.

Q. Did the party go forward? A. Yes, sir; before I got off my horse I heard some one call for ten men, and that party then went off. I saw them go off, and they were gone probably one hour when they returned.

Q. Did you hear anything of them while they were gone? A. Not a word.

Q. Did the same crowd return? A. Yes, sir.

Q. What was said by any of them as to what they had done? A. I asked if they had found the black man Jim Williams, and if they saw him; I got no answer, and they just got on their horses to leave.

Q. Who ordered them? A. I heard some man say, "mount your horses," and then they mounted and took across over the fence, and I got up forward to the foremost man, Dr. Bratton. I asked him if he had

found the negro, he said yes. Said, "I" where, where is he." Said, he, "he is in hell I expect."

Q. What further was said? A. I asked him: "You didn't kill him?" He said "we hung him." I said, Dr. Bratton, you ought not to have done that. He then pulled out his watch, and said, "we have no time to spare, we have to call on one or two more."

Q. Where did you go then? A. I went down to the bridge and crossed it, and fell into the Brattonville road; I went I reckon a half or three-quarters of a mile. There was a gun at this house; they stopped and went, but I don't know whether they touched the gun or not. We went up the road till we got beyond Brattonville, and after passing it about 300 yards, or may be more, one party went one road and fifteen or twenty went another road.

Q. In what general direction were they going? A. In the direction of Yorkville.

Q. How far were you then from Yorkville? A. I don't know; but I understand that it was about ten miles from Brattonville.

Q. What time in the night was it when the parties separated? A. It was about three o'clock.

Q. What time was it when Jim Williams must have been hung? A. I don't know; but I think it must have been about two o'clock.

Q. Which party did you go with from this place? A. I went on the right hand side, and took the right hand road.

Q. Did you go to Yorkville? A. No, sir.

Q. Which side of Yorkville did you go home? A. On the left hand side; I went directly to my home. I left Yorkville on my right.

Q. Tell us what occurred on your way home. A. Nothing occurred after we left that place. We just went straight—as fast as we could—right for home.

Q. What portion of this crowd lived in Yorkville? A. There were two men there—Dr. Bratton and Rufus McClain.

Q. After you left the place where you hitched your horses when Jim Williams was hung, what was said by Dr. Bratton about refreshments? A. Nothing was said there; but Dr. Bratton told me I needn't be afraid of getting hungry—that he would get something to eat for us—but he did not tell us where.

Q. Did you get refreshments that night? A. Yes, sir.

Q. Where did you get them? A. Some distance from Brattonville. We fell in with a crowd some distance above Brattonville, and with this party we had something to eat. Crackers, cheese, and, I think, two bottles of whisky.

Q. Did you get any ham? A. If so, I did not get any.

Q. Can you tell exactly where that was? A. I could not. It was some distance from Brattonville. I never was on the road before in my life.

Q. Then, after the two parties separated, you went home? A. Yes, sir.

*Cross Examination by Mr. Johnson.*—Q. How long had you known the prisoner before that time? A. I had known him a good while.

Q. Did you know him very well? A. Yes, sir, I was in the war with him.

Q. Did you ever see him on any raid except this one? A. No, sir, I never did.

Q. Did you ever see him at any meeting of the order? A. No, sir.

Q. When you saw him at the place where he joined you, had he any disguise on? A. No, sir.

Q. Were the rest disguised? A. A good many were not disguised. Mostly the men who met us on the Pinckney road were not disguised.

Q. Was he one of the ten that were detailed to guard the house of the negro man? No, sir, he was not one of the men that went.

Q. He was not? A. No, sir.

Q. Where was he? A. He was with the horses with me.

Q. When did you say you were initiated? A. 1863.

Q. In Yorkville? A. Yes, sir.

Q. Who made the application to you to become one of the party? A. Major Avery.

Q. What did he tell you was the object of it? A. He said this thing was intended for self-defense.

Q. How long were you present in the room when you were initiated? A. Just for a short time; not over five minutes.

Q. Was anything said by Avery in anybody's hearing, that the object was to prevent the

blacks from voting? A. No, sir, I never heard of it.

Q. What did you understand from them as their object in going to the house of this colored man? A. To know if they had any arms; that was my understanding; and they had been told by the negro man that there were from eleven to fifteen arms there.

Q. He said there were twelve to fifteen guns there? Then, as far as you know, their purpose was to get these guns? A. Yes, sir.

Q. Did you, during that night, or after they went to the house of the poor negro, or when you returned home, were you told that the object of the society was to prevent their voting? A. I didn't hear anything of that said.

Q. Where did you live at that time. A. Within five miles of Yorkville.

Q. What did you understand from Mr. Avery's speech were the matters from which they desired to protect themselves? Had anything occurred? A. No, sir, nothing had occurred at that time.

Q. Any fines? A. No, when I was initiated.

Q. Did you hear at that time of any threats having been made? A. No, sir; not at that time.

Q. When did you hear, if at all, that threats were made?

[Question objected to.]

Q. Did you hear that threats of violence were made before you went on that raid you speak of? A. Yes, sir, I did.

Q. What were the threats you heard that had been made? A. I heard this black man, Jim Williams, was formerly in a Ku Klux party, down there, and that he intended to Ku Klux the white people of that county.

Q. Was his threat of Ku Kluxing confined to the white men, from what you heard? A. Yes, sir.

Q. Was anything said about white women? A. No, sir.

Q. Was anything said about children? A. No, sir; but I heard such things.

Q. Who did you hear it from? A. Well, I heard reports of that kind—that this man said he intended to kill from the cradle to the grave.

Q. How many places do you say you were at that night you visited Jim Williams. A. We stopped at two other places.

Q. Did they belong to colored people? A. Yes, sir; we stopped at McConnellsville and went for a black man there, and we went from there to Dr. Love's and halted there, and called for a black man.

Q. Was anything said upon either of those occasions about their not being permitted to vote? A. I never heard anything.

Q. Then, if I understand you, from the time you were initiated up to the time of the raid you never heard that the object of the association was to prevent the colored people from voting? A. No, sir, and I never was at a meeting except that one.

Q. You say you did not recollect any conflagrations or fires at the time you were initiated? A. No, sir, I did not.

Q. Were there fires afterwards? A. Yes, sir, there were some fires afterwards.

Q. Whereabouts were they—how far from Yorkville? A. They were pretty much in all directions from Yorkville.

Q. What kind of houses were burned? A. Mostly ginhouses.

Q. Were many burned? A. Yes, sir, several ginhouses were burned.

Q. Who were the owners of these houses? A. Dr. Addison had a ginhouse burned that was run by water, and widow Thomas and Dr. Lowry had a ginhouse burned, and Mr. Warren had another burned.

Q. Were they white people? A. Yes, sir.

Q. Was the house of Mrs. Ray burned? Was the house of Mrs. Alcross burned? A. Yes, sir, I heard about that.

Q. Was the house of Mr. Thomas burned? A. I do not know.

Q. Was the house of Mr. Jacob Smith burned? A. He had a barn burned.

Q. What time were those burnings? A. It was in January, I think, of this year, some of the burnings; Dr. Addison's, I think, was the first of January. Some burnings were, I think, in October, 1870.

Q. The rest you think were in January, 1871? A. Yes, sir, about that time.

Q. Was there a good deal of alarm in the neighborhood on account of these fires? A. Yes, sir, there was a great deal of alarm.

Q. Did you ever hear of a threat to burn down the town of Yorkville? A. Yes, sir.

Q. From whom did you understand that threat came? A. There was a man from Yorkville came into our county; he said there had been a difficulty on Sunday night at Yorkville. This was on Monday that he came, and the negroes said they intended to burn down Yorkville on Monday night; he wanted us to turn out and help defend the place.

Q. What night was that? A. I do not recollect.

Q. Was that before you went upon that raid? A. Yes, sir, it was before.

Q. Do you recollect the month? A. No, sir.

Q. Was it in a winter month? A. Yes, sir, it was in a winter month.

Q. Can you tell whether it was December, January, February? A. I think it was in January, 1871.

Q. By Mr. Corbin. Did you ever hear any negroes make such threats as those you have been speaking about? A. No, sir, I never heard them.

Q. Did you ever see a man who did hear them? A. No, sir, I never saw a man who said he had heard them; nothing only what Dr. Bratton told me.

Q. Did Dr. Bratton say that he heard the negroes say so.

Q. All this talk about the negroes burning down Yorkville and killing the white people at Brattonsville—was all mere rumor? A. Yes, sir; it was to me.

Q. You never heard a negro say so yourself, and you never heard a white man say that a negro had told him? A. No, sir.

Q. You have spoken about rumors—first about Dr. Allison's house. Did not you hear that he said that a white man burned his place out of revenge? A. No, sir; I never heard that rumor. I never heard Dr. Allison say so; but I have heard, and believe, that white men did it.

Q. When did these burnings you speak of occur? A. I could not tell exactly; but it was in January some time—about the middle of the month.

Q. When did the raids of the K. K., generally, throughout the country commence? A. The first raid I heard of was on Rufus White; I think that was in October of '70.

Q. Was this the October previous to the fires? A. Yes, sir; after the raid on White, it was not more than a week till Dr. Allison's house was burned.

Q. What was the next raid you heard of? A. I think the next was the Roundtree raid.

Q. What did they do there? A. I understand they killed him.

Q. Who was Roundtree? A. He was a colored man who lived in the northeastern part of the county.

Q. When did that occur? A. I don't remember.

Q. Who is reported to have done it? A. I never did hear.

Q. Was it done by the K. K.? A. I suppose it was, but I knew nothing about that.

Q. What month was that? A. It was before Christmas, I think last fall.

Q. What other raids of Ku Klux did you hear of about that time? A. I think the next raid was on John Ferris.

Q. When was that? A. I think it was before Christmas.

Q. What other raids of Ku Klux do you know of? A. I don't remember which were next.

Q. Were there rumors of raids all about the country at that time? A. Yes, sir; there were.

Q. State whether the raids of the Ku Klux had been going on, had not been going on weeks and weeks prior to January, when you said those fires occurred? A. I don't remember whether they had or not.

Q. With the exception of the Allison raid they had been going on before Christmas? A. Yes, sir; but most of them were done in January and February, 1871.

Q. Was that at the time that most of the fires occurred; when was that rumor about burning Yorkville? A. That was in February or March.

Q. Did you ever have any reason to think there was any truth in that rumor? A. I do not know; from what came to me I concluded there was something in it. I did not think a man would leave Yorkville to ask me to join, unless there was something in it.

Q. You had no reason to think there was any truth in it? A. Only from what I heard.

Q. Did you hear it from anybody who pretended to have heard persons threaten it? A. There was a young man who came there to me, who

said the darkies had met, and that they would burn the place that night.

Q. Who was it? A. Harvy Clawson.

Q. How old is he? A. I suppose he twenty-two or twenty-three.

Q. Is he a member of the Klan? A. Not that I know.

Q. Did he not give you any signs? A. No, sir, not one.

Q. Did you go to Yorkville that night? A. Yes, sir.

Q. Did you see any signs of burning? A. No, sir, there was no attempt to burn it that I saw myself. I did hear that there was some fire seen under Mr. Graham's house, or had been put under Mr. Graham's house. I heard so, but I did not know it to be so.

Q. Did you hear anybody say that they had seen it? A. No, sir, I just heard that as a rumor that night.

Q. Did you come to the conclusion that it was all a hoax? A. Yes, sir.

*Re-Cross Examination by Mr. Johnson.*—Q. What is the name of the young man who told you of the intention to burn Yorkville? A. Harvy Clawson.

Q. Whose son is he? A. He is the son of lawyer Clawson.

Q. Is he the Registrar in Bankruptcy? A. Yes, sir.

Q. Did you go to Yorkville armed? A. Yes, sir.

Q. How many men did you find there? A. I found a pretty big crowd.

Q. Were they armed? A. Yes, sir, pretty generally armed with pistols.

Q. What did you understand from them was the object of their being there? A. They heard the same thing that I did—that the darkies intended to burn the town.

Q. And they were there to protect the town? A. That was my understanding.

Q. How many were there? A. It was a pretty big crowd. It was in the evening; I got there before night, and the crowd gathered there betwixt sundown and dark.

Q. How many were there? A. There were over 100 men there.

Q. How many were armed? A. I cannot tell how many.

Q. Was there a colored company in town that night? A. Yes, sir.

Q. Were they armed? A. Yes, sir.

Q. Where were they stationed? A. The lower end of the town.

Q. Where were the crowd to which you were attached stationed themselves? A. We were stationed nearly in the centre of the town.

Q. And the black company was at the lower end of the town. A. Yes, sir.

Q. Were they armed? A. They had their arms at that time.

Q. Were they armed that night—the arms had not been taken from them? A. No, sir.

Q. Was there any military or martial music? A. I heard a drum beat.

Q. Did it come from the neighborhood of the colored company? A. Yes, sir, it was down in that neighborhood.

Q. And the most of them you think were armed stayed in Yorkville? A. Till after twelve o'clock at night. Only a few bad guns, and they who had guns set them away; I think most of them had pistols buckled round them.

Q. Were you armed? A. I had a double barreled gun.

Q. Was your gun loaded? A. Yes, sir.

Q. What with? It was loaded with small shot and buck shot.

Q. Did you not in fact go up there to protect the town from what you might suppose was a threat to burn it? A. Yes, sir; that was my intention.

Q. How far were you from Yorkville when you were told to come up? A. I was at a neighbor's house near them.

Q. Did you meet citizens of the town? A. Yes, sir, I met one man.

Q. Did he express any alarm? A. One man told me there would be nothing done, and the best plan would be to disperse and go home.

Q. Was anything done? A. No, sir.

Q. Who was it told you that? A. F. J. Boll.

Q. Who was the Mr. White referred to? A. He was a man living out there seven or eight miles from Yorkville. I know very little about him. I know the man when I see him.

Q. Did you hear he had been convicted of larceny; did you hear that he had been in the penitentiary?

Question objected to and withdrawn.

ANDREW KIRKPATRICK

A witness for the prosecution, being duly sworn, testified as follows:

*Direct Examination by Mr. Corbin.*—Q. State your name? A. Andrew Kirkpatrick.

Q. Where do you live? A. Seven and a half miles from Yorkville, on the Pinckney road.

Q. What direction from Yorkville? A. Westerly.

Q. How old are you? A. Twenty, last June.

Q. When were you initiated into the Ku Klux organization? A. Last February.

Q. Where? A. At home.

Q. Who initiated you? A. Chambers Brown.

Q. What is his relation to the order? A. He was the Chief at that time.

Q. Can you remember the oath or the substance of it? A. No, sir.

Q. Can you remember any portion of it? A. I remember the last thing.

Q. What was it? A. The traitor's doom shall be death! death!! death!!!

Q. Then you joined this Klan?

Q. Have you attended a good many meetings of the order? A. Yes, sir; I was at one regular meeting.

Q. Can you tell who was there? A. There were the four Shearer boys—they were brothers—and Robert Hayes Mitchell.

Q. What man is that? A. That man there [pointing to the prisoner.]

Q. Who else was there? A. Chambers Brown, Hugh Kell, Elias Ramsay, Eli Ross Stewart, Samuel Ferguson, Napoleon Miller, John Miller, Squire Sam Brown, Robert Riggins and Hugh Wallach. I don't mind whether there were any more there or not.

Q. What did they do at that meeting? A. They elected a new Chief and Turk.

Q. Who was the Chief? A. Robert Riggins.

Who was elected Turk? A. Napoleon Miller; I think they elected Chambers Brown as Monarch.

Q. What else did they do? A. I don't recollect anything more.

Q. Did they elect any "Night Hawks"? A. No, sir.

Q. Do you recollect if they elected any Council or Advisory Board? A. I do not recollect.

Q. Did you attend any other of their meetings? When was that regular meeting held? A. I don't remember what time it was. I think it was after corn planting time.

Q. Was you on the raid on Jim Williams? A. Yes, sir.

Q. Commence and tell us all about that raid. Who gave the order to go? Where you assembled. Where you went to, and what you did? A. Well, we met at the Briarpatch.

Q. Who gave the order to go there? A. Chambers Brown.

Q. Who did you meet at the Briarpatch—tell us all about it? A. Wm. Johnson, Harvey Gunning, Bascom Kennedy, Holbrook Good, Chambers Brown, Elias Brown, Dixon Brigham, Napoleon Miller, Saml. Ferguson, John Caldwell, Bob Caldwell, Pinckney Caldwell, Jim Neil, Miles Carroll, Ad. Carroll, Dr. Rufus Bratton and Rufus McLain.

Q. Were you armed and equipped? A. Some of them had pistols and some had guns.

Q. What sort of uniform did they put on? A. They had different sorts.

Q. What were they? A. Some were red and some were white.

Q. Were they gowned? A. Yes, sir.

Q. What did they wear on their heads? A. They had capes that came down over their heads.

R. What sort were they? A. They were made out of black cloth.

Q. How were they ornamented? A. Some of them had horns on them.

Q. Were their horses disguised in any way? A. Some of them were.

Q. How? A. Some of them had blankets over them.

Q. Did the blankets conceal them? A. Yes, sir.

Q. What was the object in putting blankets over them? A. To keep anybody from knowing them.

Q. Who took command at the Briar Patch, and gave the order to march? A. I do not know who it was told us to march.

Q. What did you do after you assembled there? A. We got on our horses and started.

Q. How many different Klans were represented there? A. I think there were two.

Q. Which were they? A. Will Thompson's and Chambers Brown's.

Q. How many men do you think there were at the Briarpatch? A. I do not know.

Q. How many do you think there were? A. Some thirty or forty I reckon.

Q. Where did you go? A. We went up to the cross road above Squire Wallace's, crossed the Pinckney road, when we met the four Shearer boys, Hugh Kell and Bob Riggins, and Robert Hayes Mitchell.

Q. The defendant? A. Yes, sir; and Elias Ramsay.

Q. What was done with the Shearer boys? A. They initiated them.

Q. Who administered the oath? A. Harvey Gunning.

Q. What was done next? A. We started and went down by Squire Wallace's, went by the house and took the left hand road, and went down by Tom Harkness', and got some water at Anderson Latham's. We went on till we got to McConnellsville; we stopped there at Mr. Joe Moor's, and called the colored man out and talked to him.

Q. Who brought him out? A. I do not know.

Q. Do you know who the colored man was. A. No, sir.

Q. What did you do with him? A. We didn't do anything with.

Q. What did they say? A. I didn't hear.

Q. What was done next? A. They mounted their horses and went on.

Q. What did you do after taking this colored man out? A. I believe the next house we stopp'd at was on the left hand side; I do not know whose house it was. We stopped there and asked for a colored man that lived there, but we did not find him, and we went on until we came to the big road; then we took to the left, and to the big road, and to Jim Williams'.

Q. What did you do there? A. We hitched our horses up on the hill side like. Myself and Bob Riggins sat down. That is about all I know. What they did in the house, I don't know.

Q. Did the others go to the house? A. Yes, sir.

Q. How many went to the house? A. I don't know.

Q. Did you hear any noise while they were gone? A. I don't remember now whether I did or not.

Q. How long were they gone? A. I don't know; I suppose about a half an hour.

Q. What did they say when they came back? A. I heard some one say they had hung him.

Q. Did they use any profane language about him? A. Not that I have heard.

Q. What did you do next? A. We got our horses and went across the fields till we came to another by-road, and then we started toward Yorkville and went home.

Q. About what time in the night was it that Jim Williams was hung? A. I don't know.

Q. What time did you get home next morning? A. About daylight.

Q. Did you hear before you got there what they were going to do with Jim Williams when they found him? A. No, sir.

Q. You only know that if they went up to his house they had been gone half an hour, and that they had hung him? A. Yes, sir.

*Cross Examination by Mr. Johnson.* Q. Do you know if the prisoner went to the house? A. No, sir, I do not think he did.

Q. Where was he? A. He was with the horses, I think.

Elias Ramsay, a witness for the prosecution, being duly sworn, testified as follows:

Q. Where do you live? A. York county.

Q. How long have you lived there? A. I was born and raised there.

Q. What portion of the county? A. The southwest-ern part.

Q. How far from Yorkville? A. About ten miles.

Q. Did you ever join the Ku Klux organization? A. Yes, sir.

Q. When was this? A. On the 26th of February, 1871.

Q. Whose Klan did you join? A. Chambers Brown's.

Q. Who swore you in? A. Chambers Brown.

Q. Can you remember any portion of the oath? A. I remember the first part; I remember the words, "I solemnly swear," but I don't remember any more of it.

Q. Was there anything in it about the Radical party? A. Yes, sir. It was to put down the Radical party.

Q. Was there any penalty for divulging the secrets of the order? A. Yes, sir; any who divulged the secrets. His should be the traitor's doom. Death! death!! death!!!

What meetings of the order did you attend? A. Only one.

Q. What one was that? A. It was at the Sharon Meeting House.

Q. Who was present, and what was done? A. There were several persons present: Esquire Sam Brown, Chambers Brown, Robert Riggins, Hugh Kell, Pinckney Kell, Sherrod Childers, Napoleon Miller, John Miller, Samuel Ramsay, Robert Harkness. There were the four Shearer boys, and Robert Hayes Mitchell.

Q. This defendant? A. Yes, sir.

Q. How long have you known him? A. I have known him for about eighteen months.

Q. What were these raids for? A. It was to go round visiting colored people.

Q. For what purpose? A. For the purpose of voting.

Q. Are you positive about that? A. I heard them say that was their purpose.

Q. Were they members of the order? A. They were members of other orders.

Q. What was the common understanding? A. That was the understanding.

Q. Did you hear anybody talk about it at the Sharon Church meeting? A. No, sir.

Q. What was done at that meeting? A. Company was organized and it was for electing new officers.

Q. Who was elected? A. Robert Riggins, Chambers Brown. He was elected Monarch. Napoleon Miller; he was elected Turk. Three members of a committee, I don't know for what purpose. I was one, William Shearer was another, and Pinckney Carroll another.

Q. Who was first proposed at that committee? A. Chambers Brown. They organized that committee to examine members. They examined them before they took them in.

Q. Do you know if any other person that was nominated a member of that committee before you were elected? A. No, sir; but a number was nominated.

Q. Was Squire Hope nominated? A. He was nominated that night for one committee.

Q. Why was he not elected? A. Napoleon Miller said they had no use for him; he must be held off. He also ran against me.

Q. Why did he object to Squire Hope? A. For not riding on raids, I understood he would not.

Q. Was he defeated for that reason? A. I do not know that that was the reason.

Q. Were you on the raid on Jim Williams? A. I was one of that raid.

Q. Do you know what the object of that raid was? A. All that I can learn was that it was to seize guns.

Q. Commence at the beginning, when you first heard, of that raid? A. I heard of it that evening at home. Robt. Kell came to me and told me to meet the Klan on the big road. I went with Hugh Kell, Robert Hayes Mitchell, the four Shearers and Henry Warlick.

Q. Was that Robert Hayes Mitchell, the defendant? A. Yes, sir.

Q. When did you meet with him? A. Two miles from where I lived, and about four miles from Squire Wallace's.

Q. Did he ride with you there? A. He rode in the crowd to the cross roads.

Q. Where did you put on your disguise? A. They had them on when they come up with me. I rode on the road near Mrs. Warlick's they had on their disguises when they came there, Hugh Kell, Robert Hayes Mitchell, and the four Shearer boys and Warlick. I am not certain whether he had his disguise or not.

Q. Do you know Robert Hayes, Mitchell. A. Yes, sir.

Q. When did you meet with him? A. Two miles from where I lived, and about four miles from Squire Wallace's.

Q. Did he ride with you there? A. He rode in the crowd to the cross roads.

Q. Where did you put on your disguise? A. They had them on when they come up with me. I rode on the road near Mrs. Warlick's they had on their disguises when they came there, Hugh Kell, Robert Hayes Mitchell, and the four Shearer boys and Warlick. I am not certain whether he had his disguise or not.

Q. Do you know Robert Hayes, Mitchell. A. Yes, sir.

Q. How long have you known him? A. I have known him for the last ten years; I knew him in the war.

Q. Were you a soldier in the Confederate service? A. Yes, sir.

Q. Were you in the same company? A. No, sir; we were both in the same regiment, I personally knew him.

Q. Did you talk with him that night that you went on the raid? A. Yes, we talked with each other.

Q. What time did you get to the cross-roads? A. About 9 o'clock.

Q. How long did you wait for the other party? A. About an hour.

Q. When you came, who was in command? A. I do not know, they all came up with their disguises on, and I did not know one from another, at the time they rode up. Orders were then given to halt the other squad.

Q. Who halted them? A. Our squad did.

Q. What did they do that for? A. To know whether they were friendly or not.

Q. How did you do it? A. We first stood out in the road, and hollowed out, "who goes there?" They said "friends." We said "friends to whom," "To our country," they said.

Q. Is that the usual way of recognizing friends in the night? A. That was the first I knew of it.

Q. Who did that? A. Hugh Kell.

Q. After that had occurred, rode up to where you were? A. Yes, sir; the four Shearers were initiated there.

Q. Who swore them in? A. Charles Brown; after hallowing, they started for water; they went on another road; passed by Sam. Wallace's, turned to the left, down to Henry Larkan's, to get water; then they went on to another road to McConnellsville, and after they got there, the order was to keep quiet; we were going to seize some guns there.

Q. Did they mean that there should be no conversation? A. Yes, sir; it meant no loud talking; we went on to another place, a portion of the other men went on first; I went on but was ordered to stay with the horses, and went back; he said if a pistol fires then you with the horses will come up; I staid with the horses while the two men came up behind and I halted them; I asked who they were; they said they were fox hunters and had their dogs with them; I asked who they were; one was Dr. Love and one was Mr. Latham; I told them to remain there till further orders; in a short time we moved up there; there was no pistol fired.

Q. What occurred there? A. I said to Alonzo Brown that Dr. Love was behind; Alonzo Brown then walked up and spoke to him; he asked him where the guns were. Brown saw they were not there; he asked Love if he knew anything about it. Love said he thought that they were over at the Bethesda church. There was a colored man there, a militia man; he thought they were turned over to him, as I understood. From that, we started to cross the railroad; the biggest part of the crowd was ahead, and a part was behind. There was a colored man

taken up behind one of them, I don't know who he was.

Q. What was he taken up behind for? A. I don't know; some man took him up behind, but he was told to put him down. I don't know who said "put him down."

Q. Go on? A. The black man was then set down from the horse; we went on through the country then, where I knew nothing about; I had been to McConnellsville before.

Q. Where did you go? A. We went on; I heard no orders where we were going to; I suppose about two miles; I heard some one say in front of me, the men was not in a regular line; the road was, muddy and bad, and the line was a hundred yards long; some one said in front of me, four or five horses from me, that they were going to hang Jim Williams.

Q. This the first time you heard what they were going to do? A. The first time I heard Jim Williams' name called.

Q. Did you know who it was that said that? A. No, sir; I did not recognise the voice.

Q. Go on now? A. We went on some distance, a mile, I suppose, through the woods, and went through the woods some distance and stopped and then all in front of me got down, hitched their horses up, and all the men in front of me went off; I heard no orders given.

Q. How many went off do you think? A. I don't know, sir, I think the biggest part of the crowd; I heard no orders given and didn't know where they were going; I got down and hitched my horse up and sat down; Hugh Kell told me to notice his mule while he was gone, didn't say where he was going and I sat down, and John Caldwell came up and sat down and said he was sick, that he had the cholic, and the four Shearer boys were sitting off aside just behind where I was sitting; Robert Hays Mitchell, I heard his voice; there were some more but I didn't see nor notice how many there was.

Q. They hitched their horses and set down? A. Yes, sir.

Q. What did you hear of the party who had gone on in front? A. Never heard a word; where they were gone to, nor what they were going to do.

Q. Where did you understand they were then, with reference to Jim Williams? A. There was no understanding where they was.

Q. Do you say you heard anything while they were gone? A. No, sir.

Q. How long were the party gone? A. I suppose they were gone twenty or thirty minutes; then they returned; well, I heard a fuss during the time they were gone, something like a woman in distress.

Q. What do you mean, crying? A. Yes, sir.

Q. Was that all? A. That was all that I heard.

Q. Can you give any more particulars about it? A. No, sir; nothing more.

Q. Except that you heard a woman crying? A. Yes, sir; it appeared to me like it was a woman's voice, like she was in distress.

Q. How long was that before the party returned? A. But a short time, sir; I suppose in ten minutes they came back.

Q. What did they say when they returned? A. I heard nothing said; the horses were all scattered, and every man held to his horse, mounted his horse, and moved off out of the woods into an old field. The first that I heard—James Neil said to me—some men are powerful hard-hearted.

Q. Well? A. He said no more, sir; we went on through the fields, fell out into the big road, the Chester and Yorkville road, and went from there on; at the first house we came to, it was a black

man's house, on the right hand side; I rode up in front; a parcel of them was at the black man's house looking up his gun. Dr. Bratton said that he was an old man, and said he should not be bothered any more.

Q Did they take his gun? A I didn't see any gun; some one went and told the old man; from that they mounted and rode on past Brattonsville; they call it ten miles from York; passed on up there, and just below there the party divided, one party taking the right and the other kept on up the big road to the left; I was with the party that was on the left.

Q Now, before you divided there, did you have anything to eat? A No, sir, not there; the party I was in went on up above to John S. Bratton's house; there we stopped; the other party came around.

Q Joined you there? A Came around, yes sir, and joined us there.

Q What was done there? A There was—I rode up into the crowd that came; the biggest part of the crowd had gone on; I heard that they were passing around some crackers and whisky and some meat, but I didn't get any meat.

Q Any ham? A I didn't get any ham, nor no cheese; I only got some crackers and whisky.

Q Was there ham and crackers there? A I did not see any.

Q You saw the whisky; who furnishes those things? A I don't know.

Q That near John Bratton's house? A Just above his house, sir.

Q What did you do next, after you got through with your lunch? A Some of the crowd hollowed, hold up the guns, and see how many guns they had got; the guns were held up; I did not understand how many there was, but from the looks of them it looked like there might be twelve or fifteen guns.

Q Did you hear anybody say that Jim Williams would be hung that night? A No, sir; just then Will Johnson said that he wanted a squad of men to go down to John Bratton's house, called, parcel of men; I was one of the men, I didn't understand what I was called to go for; I walked out with them down to John S. Bratton's house; we come up on the piazza, and they hollowed for him several times to come out, and at last he came out; he was very slow before he came out; he came out with his under-clothes on, and they asked him what he meant by leaving his place armed with guns, having all his men on his place armed with guns; he said he could not help it, the State had armed them; Bratton said if he got any more guns on his place he would hold him responsible for the last gun; he said it looked hard if a man would be held responsible for what the State would do.

Q That is, Bratton said so. A He said that he voted no Radical ticket, that he had not armed the negroes; there was nothing more said as I remember; we left there, got on our horses and the front of the column came into the road and up in the direction of Yorkville; we overtaken them this side of Guthresville; we came in from there on up; well, we stopped at some houses just this side of Guthresville for guns.

Q They kept dropping into houses as they went along for guns, this side of Guthresville? A There was several houses past that I don't know whether they stopped or not, we were behind and I and a squad of men that had been left at John Bratton's; the first houses we past by where we didn't stop; the head of the column was still ahead; we made no halt at the first house; we was some short distance behind but just this side of McConnellsville

they stopped at Major Wallace's and looked there for guns.

Q Do you know any of the colored people whom they visited? A No, sir; don't know the first man's house; we passed on from them by Mr. Sam Hemp-hill's, from there by Mr. Sam Lindsay's, from there by Mr. Sanders; stopped at some of the houses there; got no guns from there; went on to Philadelphia church, and there I left them.

Q What time did you get home in the morning? A I got home sir—it was after day-light; I and Robert Riggins went from there home.

Q Did you ever hear of any Democratic niggers, as they call them, being visited by the Klan? Was not it the understanding that they were not to raid on—such? A Well I didn't hear the Democratic mentioned very much about it.

Q Didn't have many of that kind? A No, sir; not many.

Q Now what did you understand was the motive of killing Jim Williams? A I heard Chambers Brown say, on Thursday afterward, that he was a leading Radical amongst the niggers down there; consumed a good deal of time of the men's that belonged to the company.

Q He was a leading Radical among the negroes down there and consumed a great deal of time? A Yes, sir.

The Court. Of the members of the company? A Yes, sir.

Q Did you discuss with him at that time of the murder?

Mr. Johnson. With whom?

Mr. Corbin. Chambers Brown? A He said that he was hung.

Q And mentioned that he was the leading Radical down there? Yes, sir.

Q Where is Chambers Brown now, do you know? A No, sir.

Q When did he leave the country, if he left the country? A He left a few days before I was arrested.

Q When were you arrested? A On the 21st of October.

Q Have you heard of him since? A No, sir; I have not heard of him since.

*Cross-examination by Mr. Johnson.*—Q Didn't hear anything said of Democratic negroes; I understand you to say, Mr. Witness, being raided upon; do you know any negroes supposed to be Democratic being arrested by the military and confined in jail? A No, sir, I don't remember.

Q How many others did you visit that night, the Klan of which you were a member, besides Rainy's house; you have mentioned a good many, but I forget the number of them? A I don't know the number of them myself.

Q Was it eight or ten? A There was more places than I knew; I didn't know how many was visited; I didn't know many were visited in the rear of John S. Bratton's house.

Q But the places visited that you did know; was anything done except to search for guns? A Nothing done, sir; only wanting guns; they give up their guns.

Q And the result of the raid was that twelve or fifteen guns were found? Yes, sir.

Q What other place did they go to? A Went up the road, sir, in the houses on the other side of the road, hunting for guns.

Q Do you know how many guns did they get in the whole? A No, sir; I don't know of their getting any more after they left Bratton's.

Q Do you know what kind of guns they were? A They looked like the army guns.

Q Do you not know that they were guns furnished



to the blacks by the State, or did you know anything about it? A I did not know, I only heard that the State had furnished those guns.

Q You did find that they were muskets? A They were breach-loaders.

Q You don't know where they came from? A No, sir.

Q How far do you live from Yorkville? A Ten miles.

Q On what day was the raid, of which you were on, which ended in the hanging of this poor fellow? A I don't understand you.

Q You say you went on a raid, which ended in the hanging of Rainy?

The Court. Williams. A Williams was the name that I understood.

Q What is the other name? A Well I have heard since I was in jail, Jim *alias* Rainy.

Q What day of the month was it, or what month? A It was March, 6th of March, sixth night.

Q Well, at that time, or before that time, had you any knowledge that there had been fires in the neighborhood? A Yes, sir; there had been several fires.

Q Had you then any knowledge—or had you heard that threats had been used by the blacks, or some one of the blacks, to burn and destroy, or kill the whites—to murder from the cradle to the grave, there.

*Redirect Examination.*—Q Did you hear any body say it among the negroes?

*Re cross Examination.*—Q What I asked you was whether you heard that such threats had been made? A I heard by white people, I didn't hear by negroes.

*Redirect Examination.*—Q. It was hearsay? A. All hearsay.

Q You didn't know anything about it? A. No, sir.

#### TESTIMONY OF SAM FERGUSON.

Sam Ferguson was the next witness called for the prosecution; he was sworn and said:

*Direct Examination by Mr. Corbin.*—Q. How old are you? A. Sixteen years old.

Q. When did you become a Ku Klux? A. The 16th day of last March.

Q. Who initiated you? A. Hardy Gunnings.

Q. Was that the night of the raid on Jim Williams? A. Yes, sir.

Q. Where did he initiate you? A. Yorkville.

Q. At what time in the day? A. About the middle of the evening.

Q. Middle of the evening? What time in the afternoon, after dark or before? A. It was before dark.

Q. After he initiated you, what did he tell you to go and do that night? A. He told me he wanted me to go to the old field—the briar patch.

Q. In the first place he blindfolded you? A. He blindfolded me and told me to get down on my knees.

Q. And then what? A. Then he came over the oath then.

Q. Can you tell us what the oath was? A. I can tell you some of it.

Q. Tell us what you know? A. Well, they were not to tell any secrets nor signs.

Q. What was the penalty if you did? A. Death.

Q. Well, after you were initiated he told you you must go meet them at the briar patch? A. Yes, sir.

Q. What did he tell you they were going there for? A. He didn't tell me what said there was going to be a meeting there.

Q. Did you go? A. Yes, sir.

Q. Who did you go with? A. I went with Bill Miller and Josiah Martin, part of the way.

Q. How many people did you find there when you got there? A. I don't know how many were there.

Q. A great many? A. No, sir; not a great many.

Q. Yes? A. I don't know how many there was—I reckon there was about twenty—I reckon.

Q. What did they do then? A. Well, they put on their disguise.

Q. Did you put on one? A. I put a piece of cloth over my face.

Q. What did you do that for? A. Well, because they told me to do it.

Q. For the purpose of covering your face up was it? A. Yes, sir.

Q. They all put cloths over their faces? A. Yes, sir.

Q. What did you do next? A. Well, they got on their horses.

Q. Who took command? A. I don't know who.

Q. Were the men numbered or not? A. Yes, sir, I think they were.

Q. How were they numbered; what number did they give them? A. They just say No. 1 and 2.

Q. Each man present was given a number, commencing with No. 1? A. Yes, sir.

Q. What was your number? A. I don't remember.

Q. You had a number? A. Yes, sir.

Q. When were they numbered? A. I don't know.

Q. When did you start off then, where did you go, and what did you do?

A. Then we went on down to the Pinckney road, the cross roads; then they met another crowd there.

Q. Whom did they meet there? A. There were the four Shearer boys.

Q. Brothers? A. Yes.

Q. Who else was there? A. There were Bob Rigings and Hugh Kell.

Q. Who else? A. I don't know who else. I didn't know all of them.

Q. How many were there? A. I don't know how many there was; wasn't very many, though.

Q. What was done then, anything? A. They swore them four Shearer boys.

A. What did you do there? A. Well they got on their horses again and started down the big road.

A. Where did they go to? A. Went down below Squire Wallace's, and started off to the left hand.

Q. Go on; what was it they did? A. They went on and stopped at Anderson Lathams, and got a drink of water.

Q. What next? A. They went on and stopped at a lane; went on a good piece and stopped at a lane, and some of them got off their horses and left them there, and went up across the field.

Q. Go on as far as you can? A. Then they went on up the railroad, the balance of them.

Q. Whereabouts on the railroad? A. Right where the road crosses the railroad.

Q. What did you do there? A. We stopped there, and they fetched out a nigger man out there.

Q. Who was it? A. I don't know who he was.

Q. What did they do with him? A. Some of them took him up on behind.

Q. On the mule? A. Mule or horse.

Q. Who was it? A. I don't know.

Q. What did they do that for? A. I don't know what for. They took him on a little piece and they let him down.

Q. Why did they let him down? A. I don't know why.

Q. Where did you go? A. They went on and some of them stopped at another house by the side of the road.

Q. What did they do there? A. I don't know. I don't know whether they done much of anything; I was off a piece. Then they went on a good piece further and took off through a piece of woods, and went on through the woods a good piece, and then they all got down off their horses.

Q. What was done then? A. Some of them went down across the woods.

Q. How many? A. I think about ten or twelve.

Q. What did they do down there? A. I don't know what.

Q. What did you hear while they were gone? A. I didn't hear anything about them.

Q. Do you know how long they were gone? A. No, sir.

Q. How long were they gone? A. I don't know; I reckon about an hour.

Q. What time of night was it? A. I don't know.

Q. When they came back, what was done? A. They stayed for everything to get on their horses.

Q. Did they say anything about what they had done? Did you hear anything about having killed a d—d Radical? A. No, sir; not there.

Q. Where did you hear that remark? A. I didn't hear it anywhere.

Q. Tell us what you did hear about it? A. We went on a piece further that day; had hung a nigger that night; Chambers Brown told me they had hung a nigger that night.

Q. Tell you who it was? A. No, sir.  
 Q. Tell you what they hung him for? A. No, sir.  
 Q. When did he tell you that? A. He told me that before we got down to the branch.  
 Q. How far was it from where you hitched the horses? A. A good piece; I don't know how far.  
 Q. After that where did you go to? A. We came up the road right straight.  
 Q. What did you do on the way? If you stopped to visit houses say so, say so? A. I expect some of them stopped to visit houses, but I didn't see any of them do it. Then they went on up there above the big white house.  
 Q. Whose house is that? A. I don't know. I reckon some of the Brattons' houses.  
 Q. What did you do there? A. They stopped there and had something to eat.  
 Q. What? A. They had some crackers.  
 Q. Any thing else? A. That is all I got.  
 Q. Where did you go from there? A. Went right straight up the road off home.  
 Q. Where else, what did you do, go home? A. Yes, sir.  
 Q. What time did you get home? A. I got home just before day a little while.  
 Q. Who went home with you to Yorkville. Who was with you? A. Bill Miller was with me when I got home.  
 Q. Do you live in Yorkville? A. No, sir.  
 Q. How far from Yorkville? A. 'bout three miles.  
 Q. Did you go through Yorkville? A. No, sir.  
 Q. That is the only raid you were ever on? A. That is all.  
 Q. You were initiated that night? A. That day.  
 Q. That day? A. Yes, sir.  
 Q. Why did you join the organization? A. Well, I was—because—  
 Q. Who induced you to join the Klan, and what reason did he give? A. Pole Miller told me he wanted me to join it.  
 Q. What reason did he give for wanting you to join it? A. He did not say why he wanted me to join it.  
 Q. Did he say anything about whether it would be better or worse for you to join it? A. No, sir.  
 Q. Did he tell you what the object of the organization was? A. No, sir.  
 Q. Had you known any of the members of the organization before that time—know any of the members of the Klan? A. I knowed one; I knowed Pole Miller and Avery Stewart. They came along and called me out.  
 Q. What for? A. They asked me the way to York.  
 Q. Did they have disguises on? A. I don't think they were disguised; they had white cloths on their horses.  
 Q. Did he speak of this to you, or did you speak of having seen them—"tell Pole Miller that I know him?" A. I did.  
 Q. What did he say? A. He first said it was not him, I believe. I told him I knew it was him.  
 Q. What did he say then? A. He said it was him; he said it was Avery Stewart along with him.  
 Q. Then what next? A. He told me he wanted me to join.  
 Q. And you told him you would? A. Yes, sir.  
 Q. You are the son of a widow? A. Yes, sir.  
 Q. The only son? A. No, sir; I have one brother.  
 Q. Older or younger? A. Older.  
 Q. Where is he? A. He is at home.  
 Q. Is he a member of the Klan? A. No, sir.  
 Q. Mr. Johnson. What has that to do with it? A. Yes, sir.  
 Q. Are you the only support of your mother—and your brother? A. Yes, sir.  
 Q. Mr. Johnson. What has that to do with it? A. Yes, sir.  
 Q. Are you the only support of your mother? A. Yes, sir.  
 Q. Mr. Johnson. We object to that.  
 Q. Mr. Corbin. We are giving the motive of this institution. Our distinguished friends on the other side have chosen to resort to all sorts of shifts to indicate the motives of individuals to join this order. I want to show by this lad that he was the only support of a widowed mother, and he was simply induced to go on this raid.  
 Q. Mr. Johnson. I don't see the question whether he is the only support of his mother has anything to do with it.  
 Q. Mr. Corbin. We have nothing more to say.  
 Q. Mr. Johnson. I know, but you have said it.

The Court. It is not pertinent to show it.  
 Mr. Corbin. It is the same course pursued by the counsel on the other side.  
 Mr. Johnson. I beg your pardon.  
 Mr. Corbin. I insist that it is.  
 The Court. Gentlemen, go on.  
 Mr. Corbin; [to the witness,] come down.  
 Mr. Johnson. Wait, you have no right to set him aside.  
 Cross-Examination by Mr. Johnson.—Q. You live there miles from Yorkville? A. Yes, sir.  
 Q. Are you often in Yorkville, or were you at that time? A. Yes, sir.  
 Q. Did you hear or know anything of there being fires in that neighborhood before the 6th of March? A. No, sir.  
 Mr. Corbin. Now, I want the court to understand that they ask these witnesses about fires; about fires. We insist that it is all hearsay testimony, and is not entitled to come in.  
 Mr. Johnson. The court has decided that.  
 The court. Go on Mr. Johnson.  
 Q. The question that I put to you is: at that time had you heard, or months before, that there were fires in the neighborhood? A. Where, in our neighborhood? A. In the neighborhood of Yorkville? A. I don't mind that I heard tell of some fires. Not certain much about it.  
 Q. Did you hear that any threats had been made by any black person to burn and destroy the property of whites, or murder whites from the cradle to the grave? A. No, sir, didn't hear anything of it.  
 Q. Did you see this man on the night of that raid? A. What man?  
 Q. The man on trial? A. No, sir, I don't mind recognizing him.  
 Q. You don't know him? A. O, I know him very well.  
 Q. Did you recognize him that night? A. No, sir.  
 Redirect Examination.—Q. Didn't know whether he was or not? A. No, sir.  
 Q. Did you know half the people that were there? A. I don't know whether I did or not. I expect I did.  
 Q. That is, you didn't recognize half of them that night, did you? A. I don't expect I did.  
 Mr. Corbin. Elias Ramsay, who was just on the stand, informs me that he desires to be recalled, because, he says, in the excitement of the moment, he omitted to name some parties that were there. I ask that he may be recalled.  
 Mr. Johnson. We do not object.  
 ELIAS RAMSAY, RECALLED.  
 Q. You have requested to be recalled to state some names that you omitted in the excitement of the moment? A. Yes, sir.  
 Q. Who were they that you omitted? A. Well, John Caldwell, Pinckney Caldwell, Robert Caldwell, Andrew Kirkpatrick, Sam. Ferguson, Napoleon Miller, Will Johnson, Harvey Gunning, among others; some other names that I have set down here, that I could call the names over in the writing, that I was with.  
 Q. Well?  
 Mr. Johnson. We admit, may it please your Honors, that all he says were there.  
 Mr. Corbin. Go on and name them.  
 A. [Reading from memorandum.] The four Shearers, Robert Riggins, Hugh Kell, Henry Warlick, Robert Hayes Mitchell, Chambers Brown, Alonzo Brown, Will Johnson, Dr. Bratton, Milus Carroll, John Caldwell, Robert Caldwell, Pinckney Caldwell, Harvey Gunning, James Neal, Anderson Carroll, Robert Bigham, Andrew Kirkpatrick, Samuel Ferguson, Pole Miller. These are men that I recognized on the raid that night.  
 Mr. Corbin. If the court please, we rest here—do not propose to introduce any more testimony in this case.  
 The court here took a recess for fifteen minutes.  
 At three o'clock P. M., the proceedings were resumed.  
 Mr. Corbin. If the court please, I have mentioned to the counsel on the other side, that we would like to call one witness, and Mr. Johnson tells me that he does not object.  
 TESTIMONY OF AMZI RAINEY.  
 Amzi Rainey was then called for the prosecution, and being sworn testified as follows:  
 Q. Where do you live? A. On Mr. Gill's place.  
 Q. In York County? A. Yes, in York County.  
 Q. How long have you lived in York County? A. I have been born and raised there.

Q. How old are you? A. About twenty-eight years old.

Q. Have you been a voter in York County? A. Yes, sir.

Q. Have you voted? A. Yes, sir.

Q. Nobody has ever questioned your right to vote there, have they? A. No, sir.

Q. Did you vote at the last election? A. Yes, sir.

Q. Vote for A. S. Wallace? A. Yes, sir.

Q. Vote the rest of the Republican ticket? A. Yes, sir.

Q. Now, will you tell the jury whether the Ku Klux raided on you, and what they said and what they did to you. Tell us all about it. A. Well, on a Saturday night, about ten o'clock.

Q. When was that? A. It was about the last of March, as near as I can recollect. I was laying down. I laid down at the first dark and was laying down by the fire. The rest done been abed, and about ten o'clock my little daughter called me and said, "Pappy it is time we are going to bed, get up;" and just as I got up and turned around I looked out of the window and I see some four or five disguised men coming up, and I ran up in the loft, and they came on; come to the door; and when the come to the door they commenced beating and knocking. "God damn you open the door!" open the door! open the door!" and commenced beating at each side—there is two doors—and they commenced beating both doors, and my wife run to one of the doors and they knocked the top hinges off of the first, and she run across the house to the other and agin that time they got the two hinges knocked off the other door, and the bolt held the door from falling, and she got it open; that is she pulled the bolt back and throwed it down, and when they come in they struck her four or five licks before they said a word.

Mr. Johnson. We object to all this, may it please your Honor.

The Court. Let him go on. A. They asked her who lived here, she said Rainey—Amzi Rainey—"What Amzi Rainey! What Amzi Rainey?" And she said Amzi Rainey, and he struck her another lick and says, "Where is he, God damn him, where is he?" and she says, "I don't know," and one said, "O, I smell him; God damn him he has gone up in the loft." He says: "we'll kill him too;" and they come up then; this Sam Good, they made him light a light.

Q. Who is Sam Good? A. It is a black man that lives on the same place.

Q. You say he had come on with them? A. Yes, sir; and he lit a light, and they made him and my wife go up before, and he followed them up there, and I was in a box, and they said, "Oh, he is in this box, God damn him, I smell him; we'll kill him;" and the other says, "Don't kill him yet;" and they took me down. This man that struck my wife first, ran back to her and says, "God damn her, I will kill her now, I will kill her out;" and the one that went after me, he says, "Don't kill her;" and he commenced beating her then, struck her some four or five more licks, and then run back and struck me. He run back to her then, and drawed his pistol and says, "Now, I am going to blow your damn brains out;" and this one by me threw the pistol up, and says, "on't kill her." He aimed to strike me over the head, and struck me over the back, and sunk me right down. Then after he had done that, my little daughter—she was back in the room with the other little children—he says, "I am going to kill him;" and she run out of the room and says, "Don't kill my pappy; please don't kill my pappy!" He shoved her back, and says, "You go back in the room, you God damned little bitch; I will blow your brains out!" and fired and shot her, sure enough.

Q. Did he hit her? A. Yes, sir, he hit her; and after he had done that, she went back into the room, and they commenced shooting over me—two shots over me and two shots over my wife. They shot about fifteen shots; and I had a sleeve jacket on; it was woollen, and they set fire to it—just in a light blaze of fire—and after that was done, they hollered to me, "Put out that fire," I would burn up, and dammed if I wouldn't go to hell. Then my little daughter had catched her hand full of blood, got to the door, and just throwed it out; and they looked around and see that, and see her; and then they took me—

Q. Where did they hit your daughter? A. Hit her on the forehead; the ball glanced off from her head. Then they took me right off.

Q. Off where? A. Off up the road, about a hundred and fifty yards; and they wanted to kill me up there, and one said, "No, don't kill him, let's talk a little to him first." Then he asked me which way did I vote. I told him I voted the Radical ticket. "Well," he says, "now you raise your hand and swear that you will never vote another Radical ticket, and I will not let them kill you." And he made me stand and raise my hand before him and my God, that I never would vote another Radical ticket, against my principle.

Q. Did you swear so. A. I did raise my hand and swear. Then he took me out among the rest of them, and wouldn't let them shoot me, and told me to go back home.

Q. Did they make anybody else swear right there, that they wouldn't vote the Radical ticket. Was Sam Good there? A. Yes, sir.

Q. What did they do to him? A. They asked him which way he voted. He says the Radical ticket, and they asked if he would ever vote any Radical ticket, and Sam told them "No, sir." And that was all that I heard passed 'twixt them and Sam.

Q. What did they do when you went home? A. After I went back my wife she hobbled out—

Q. When you left them what did they do to you? A. Told me to run; and throwed two big rocks after me, about the size of my fist.

Q. Did they hit you? A. No, sir; one went one side into a wood pile, and the other struck the chimney.

Q. How many of the Ku Klux were there? A. It looked to me like there was about twenty-five.

Q. How were they dressed? A. Had on—some of them had on white gowns and some of them had on red ones, and had on false faces and something over their heads.

Q. Did you know any of them? A. No, sir.

Q. Didn't know any of them? A. Didn't know any of them.

Q. What time in the night was this? A. About ten o'clock—'twixt ten and eleven o'clock.

Q. Do you know what they did to your daughter in the other room? A. Yes, sir.

Q. Did you see it yourself? A. I didn't see it; have only her word for it.

Q. I won't ask you that then? A. I didn't see that.

Mr. Corbin. You may have the witness.

Mr. Johnson. We have no questions, may it please your honors.

Mr. Corbin. We will stop here, if the court please, inasmuch as we agreed with the other side that we wouldn't call but one witness.

Mr. Johnson. We have no objections to your calling more.

Mr. Corbin. You have no objections?

Judge Bond. Do you propose to call anybody else?

Mr. Johnson. We want to know if they are through, sir.

Mr. Corbin. We will call one other.

Mr. Johnson. I don't like to object to the course which counsel for the United States has pursued. It is suggested to me that what he is doing now—

Mr. Corbin. I thought that you didn't object.

Mr. Johnson. The purpose now, as I understand it, is merely to offer cumulative evidence. If there is any new fact—

Mr. Corbin. This is a new fact.

Mr. Johnson. If it is to be a new fact, it is another matter.

Mr. Corbin. It is a new fact.

#### TESTIMONY OF DICK WILSON.

Dick Wilson was then called for the prosecution. He was sworn and testified as follows:

Q. By Mr. Hart, for the defense. Have you been in the court room to-day? A. No, sir.

Q. Yesterday? A. No, sir.

The Court. That is a question of credibility, and not admissibility.

Direct Examination by Mr. Corbin.—Q. Where do you live? A. I live in York District, sir.

Q. On whose place, in York county. A. Dr. Lowry's.

Q. Did you vote at the last election? A. Yes, sir.

Q. Which ticket did you vote? A. I voted the Republican ticket.

Q. Did you vote for Mr. Wallace? A. Yes, sir.

Q. Have you voted there before? Yes, sir.

Q. Nobody questioned your right to vote when you did vote? A. Not particularly, at the ballot box.

Q. Now tell us whether the Ku Klux visited you and where? A. Well, they visited me on the 11th April, about two hours before—well, about twixt two and three o'clock in the morning. I had been up till it was light, and laid down and got into a sleep, and I woke up and these men were in the yard, two of the men came to the house, and the other four went to my son's house.

Q. What is his name? A. Richard. These men came to my house—firstwards I noticed them to saying, was open the door. Next word was make up a light, make up a light. I immediately then jumped up and draw on my pants, and by that time the door fell in the middle of the floor. They commenced firing under the door and around the house. I stood still then. They stopped then for a minute and asked me to make up a light again. I jumped to the fire and made up a light. The next question, who lives here? says I, Dick Wilson. Is this old Dick? I told them yes, sir. Where is your son? I don't know, sir, where he is. You are a dam'd liar, sir—walk out here. I have a word with you, sir. Very well, I will come out. Come out, come out right now, come out. I walked out—go on down here before me, sir, to the other house; and there was four men in there; a big light in the house; a good knot of pine on the fire, and they went searching cupboards and trunks, and looking everywhere. I could see them as plain as I can see you right now. Well, they searched the house all over and they could not find him. They said look under the floor. Well, they tried to get up the floor, but the floor was so well nailed they didn't get it up. One of the men, in the middle of the house, turned around and says what G—d damned rascal you've got there—some man says that is old Dick Wilson. What do you going to do with that damned old son of a bitch? Well, we haint determined on yet what we'll do with him. They still searched on, and couldn't find him.

Q. Couldn't find what? A. Couldn't find my son, and they came out. After they came out, then the question is put me then: "Where is your son?" Says I: "Gentlemen, I don't know." "Your son; don't you call me any gentleman; we are just from hell fire; we haven't been in this country since Manassas; we come to take Scott and his ring; you damned niggers are ruining the country, voting for men who are breaking the treasury; where is your son, I say?" "I don't know, sir, where he is." "You are a damned liar, sir, and I will make you tell where he is. Don't you rather the men of this country would rule it, sir, as these men as is ruling it?" Says I: "I didn't know there was any other men ruling but the men of this country." "Is Scott a man of this country, sir?" Says I: "I don't know; I never seen him." "Then, why is it you don't go to some good old citizen in the country who would tell you how to vote." Says I: "I went to men who I thought knowed and ought to know." "Who were they?" "Well," I says, "that was Mr. Wallace." "Yes; just as damned a rascal as you are." "I went to Mr. Wallace, and I went to several other gentlemen that I did name out." "Well, what about the League?" I told him that I did belong to the League.

Q. What—the Union League? A. Yes, sir. "I suppose, then, you are a good old Radical?" Says I: "I don't know whether I have been; I have tried to be." "Yes; and, damn you, we'll make a Democrat of you to-night." That was the next word. Another little one jumped up there, with some horns on his head, and says: "We'll take the damned rascal off and remind him of what we have told him before this; we have told him this long ago, and we want to be obeyed; now we will take satisfaction; walk on here, sir—take the road before me." I walked on. "Drop your breeches, God damn you!" I just ran out of them. "Stretch out; we want to make a Democrat out of you to-night." I stretched out full length—just as long as I could get; I would have got a little longer if I could.

Q. Did you drop your pants? A. Dropped them down, just fell out full length.

Q. And then what? A. One went that side and two on this side. Well, they commenced whipping me; I commenced begging them so piousful. Don't beg, God damn you; if you beg I'll kill you. One of them said stop this whipping right off. One of you gentlemen take that pistol, and go to his head and other to his feet, and if he hollows or moves, I will blow his brains out. Then they commenced whipping me; they just ruined me. They cut me all to pieces; they did do it, and I wouldn't mind it so much if they had scattered the licks, but they whipped all in one place; that is what they done. They stopped on me then for a while. Will you vote the Democratic ticket next time? Yes I will

vote any way you want me to vote, I don't care how you want me to vote, master, I will vote. Says he there now put it to him; God damn him he has not told us yet where his son is; we have got that much and will go the balance. They commenced whipping me again. I told them at last I did not know where he was, and didn't know where he was. After they got done whipping me, they ordered me then to get up, and I got up as quick as I could; I couldn't get up very fast; quick as I got up I drew up my pants; couldn't button them no how. Had them in my hands. Now let's see how fast you can run. Well, I was going to strain even lead that was in me, because I was hurt so that I could hardly move; but I intended to do my best. The other says, I have a word or two to speak to him. I will give you ten days—you and your son both—to go and put a card in Grist's office, and show it, and let it come out in the paper in ten days from now, to show that you are done with the Republican party, Scott, and his damned Ring; and if you don't do it, I will come back for you both again; and if I can't get you at night, I will take you in daylight. Go off in the house. I went off in the house and shut the door—sure enough, I shut the door. I was lying down on the floor. I wasn't able to get to bed. I got worse after I got to the house.

Q. How bad were you whipped? A. I was whipped badly. I had on me a pair of pants too large; and next day I had to tie a string on them so they would meet.

Q. Your back was all whipped to pieces? A. Just all hove up. It was not cut up so, but was bruised.

Q. What did they whip you with? A. With ramrods.

Q. Take them out of their guns? A. Took them out and twisted them up.

Q. What were they—iron ramrods? A. I don't know. There was one felt very much like it. I can't say positive that they was iron ramrods. They had this brass put on them where they rammed the powder and stuff down in the guns. These was there next morning—white oak ramrods.

Q. Did you find them? A. Yes, sir.

Q. How much did you find of the ramrod? A. I found two pieces right at the house, and betwixt my house and the creek I found the other.

Q. There were three broken? A. Yes, sir; both of them.

Q. How big were they? A. About the size of my finger.

Q. Did you go and put a card in the paper, as they told you to? A. No, sir; I did not; I did not do anything.

Q. Did you stay at home nights after that? A. Yes, sir; I stayed at home; they told me to stay at home, and I done it.

Q. How long before you were able to work after that? A. I went and knocked about, but I wasn't able to do a piece of work under a week; and to do a good day's work, I wasn't able to do it in two weeks, because I couldn't walk. I couldn't sit down, and when I lay down, I would have to lay right flat down on my stomach.

Q. How many were they there? A. I didn't see but six.

Q. All have disguises on? A. Yes, sir.

*Cross-Examination by Mr. Stenbery.*—Q. Did you know any of them in their disguise? A. Well, sir, I did.

Q. You did know? A. I did know.

Q. How could you tell, if they were disguised? A. I saw the men's hands, shoes, clothing, everything they had on.

Q. Did you know the men? A. One was Dr. Parker.

Q. Who was the other? A. Was Mr. John James Miller.

Q. The other? A. John Lyle.

Q. Who was the other? A. The other one was Mr. Bill Lowrey.

Q. Who was the other? A. Now the other man—I believe there were more—but will not swear to that man. I believe they were there.

Q. I only ask you who knew were there? A. I won't be positive that that man were there; and that was Mr. Bishop Sandifer and Mr. Thomason; but the other men, I did not say I knew them two men; but these other four I know them; there were six altogether.

Q. And you told four of the six, notwithstanding they were disguised? A. I knew four of them out of the six.

Q. How were they disguised? A. Well, they had a tile cloth over the head that came down and fastened back of the head. They had on common coats. This one had on a calico dress, the other had on a red dress pinned down before; the other had on, looked like laced overcoats, came way down here, [indicating below the knee.]

Q. Had they false faces? A. Well, they first had simply a false face, made to cover over the head, eyes and nose, and all the mouth was out, just a place where they could see, you know.

Q. It was cloth? A. Yes, sir.

Q. All the head, and the eyes, and the nose, everything, and the face was concealed, but the mouth; but on told four of them because you saw their underclothing? A. Yes, sir.

Q. You told it from their shoes, and saw their underclothing? A. I knew their hands, and I knew the men by their conversation. I got a full understanding of their voices.

Q. How far did they live from you? A. Mr. Miller lived about three miles and a half, or four miles, I will say, at the outside.

Q. How far did either of the others live from you? A. Dr. Parker lived about three miles from me or a mile nearer.

Q. How far did the other live? A. Mr. Lytle, Sr., lived about a mile and a half from me.

Q. How far did the fourth live? A. Mr. Lowrey lived in the same plantation, about two miles.

Q. Now you told them by their hands as well as by their underclothing? A. Yes, sir.

Q. How can you be so familiar with their hands? A. I know Mr. Lowrey by his hands; I've been working with him; he had been with me the day before.

Q. What sort of a hand has he? A. He has a white ad, but has a finger that stands crooked; and he had scars on his hands, and that is the way I knew him.

Q. Did each of the other three have fingers of that sort, and sores on their hands? A. No, sir.

Q. How did you know their hands? A. I knew the men by their discourse; I knew them by their hands and by their discourse; I didn't say I knew them all by their hands; by their hands I knew two of them.

Q. You knew one by his hands. A. Yes, sir, I went into this thing when they came to my house; they said they had risen from the dead; I wanted to see what sort of men they was; I went a purpose to see who they was; whether they were spirits, or whether they were human, but when I came to find out, they was men like me.

Q. They told you they would come back unless you published a card they told you to publish, renouncing radicalism and so forth; they would come back and pay on another visit? A. Yes, sir.

Q. Well, did they? A. No, sir; they did not.

Q. They all lived in that neighborhood? A. Yes, sir.

Q. Did you publish the card? A. No, sir; I didn't.

Q. No such card was published, then? A. Not by me.

Q. Was there a grog shop near your house? A. There was, three miles from where I lived.

Q. Do you know this man on trial now? A. I don't know him, as I know of.

Q. Could you tell him by his hand? A. I know he is a man; that is all I know about him.

Q. Tell the jury whether you know? A. If I had been accustomed to that man and known what suit of clothing he wore, and known his voice—I knew those other men's voices—I could tell more about them, but just fetch out a stranger—I can't tell anything about it.

Q. But answer my question, whether you recognized his man as one of the men who was at your house? A. No, sir, I don't recognize him as one of them.

Re-direct Examination.—Q. Did they use the word Ku Klux—did they call themselves Ku Klux? A. I don't and them saying anything about that.

Q. You understood them to be Ku Klux? A. Mr. Johnson. That will not do.

The Court. Oh! no.

Mr. Corbin. I think we will stop here, if the court please.

Mr. Johnson. No, we want to know, may it please your Honors, whether they have stopped, not whether they think they have stopped.

The Court. We will understand that they have stopped.

MRS. JULIA RAINEY

Was then called for the defense.

Q. Do you reside in your county? A. Just over the line,

Q. Do you know this man Captain Jim Rainey? A. I do.

Q. How far did this man Jim Rainey live from you? A. Two miles.

Q. Were you well acquainted with him? A. I am.

Q. How long have you known him. A. Twelve years.

Q. I believe he was a servant in the family? A. Belonged to my husband.

Q. To what?

Judge Bond. He was her former slave.

A. My former slave.

Q. He has been in that neighborhood for the last four or five years? A. Yes sir, except one year absent.

Q. What was his official position in the neighborhood? A. When?

Q. Why recently—just before his death. A. Captain of a militia company.

Q. Was this company armed? A. Yes, sir.

Q. Did you have any occasion to see the members of it after? A. Occasionally.

Q. Well, first state, Mrs. Rainey, in reference to that company; state what was its conduct and character in the neighborhood, as also of its captain? A. Well, sir, that company caused a great deal of disturbance and uneasiness generally; they were under his control entirely, and they were not very orderly managed; he had been absent one year with Sherman's army; he left that and came up to Chester; he went off and told me on his return; he came in, when he returned, to see his old master,

my husband; he told us he had been absent one year in Sherman's army; that he had been in the army, and that was the principal part of that conversation; then he was elected captain of this militia company, and remained a captain, I suppose, nearly a year; their conduct was disturbing, indeed; they had become to alarm the whole country; I knew him very well, having belonged to my husband, and my husband treated him very kindly, retaining all the old family, and living immediately on the York road, between his house and Chester, he always felt at liberty to enter my kitchen at any time to see the old family servant, there was always a great deal of politeness between us, and, therefore, saw and heard a great deal of him, and his threats became very dangerous indeed; indeed sir, for two months before his death, I suppose he averaged twice a week in my kitchen, passing backwards and forwards, to Chester; I did not know his business, but it was something very urgent, and seemed to be disturbing the neighborhood generally; his threats were very common to me, through the servants; I never heard him myself.

Mr. Corbin. Well, I don't think, if the Court please, this sort of testimony will do. Witness. I heard it through my family servants.

The Court. That won't do sir. Witness. I was just saying that the feeling in the country had become very alarming, that was the condition of the country.

Q. State what the conduct of these armed men under his control in the neighborhood? A. Very boisterous.

Q. Did they pass your house frequently? A. Not mine; they passed up towards Yorkville.

Mr. Corbin. Testify as to what you know yourself.

Witness. Well ask me questions, and I will answer you.

Q. What was the character of the disorder that those men committed? do you know of some of the disorderly acts? A. I saw nothing sir with my own eyes.

Q. Was it a frequent occurrence?

The Court. That is a leading question.

Q. Were there any fires in your neighborhood previous to the death of this man? A. Yes.

Q How long previous to his death? A Some two or three months.

Q Were those fires committed by incendiaries; have you reason to believe.

The Court. Oh! that will not do.

Mr. Corbin. Ask her who committed this burning if you want to.

Q Do you know, Mrs. Rainey, who committed those acts, or what was the character of the act? A It was of the incendiary.

Q It was? A It was.

Mr. Corbin. What fire was that? A The burning of my own gin-house.

Q Was any other property consumed with it? A Twenty-five bales of cotton.

Q What time did that occur? A The 13th day of December.

Q Of last year? A Yes, sir.

Q Had you heard of any raids by the white people in that neighborhood or in that part of the country previous to that? A No, sir.

Q Were there any acts of disorder committed there, of a similar character, that you know of? A Not that I know of.

Q Have you any facts in your knowledge that will direct you as to the persons committing these incendiary fires, or the character of persons? A What did you ask?

Q Are any facts within your knowledge, that leads you to determine the class of persons? A Yes, sir.

Mr. Corbin. Tell us what the threats are? A Threats was made to a white man.

The Court. That will not do.

Witness. The threats were heard to be made to burn it before they left the gin-house that evening?

The Court. Did you hear them? A No, sir.

The Court. That will not do, gentlemen.

Q Do you know that in the point of fact, there were a great many fires? A Yes, sir; a great many.

Q Do you know whether people in that neighborhood were in a state of alarm? A They were.

Q Alarmed about what? A Alarmed by fires.

Q Any other cause of alarm? A Until later, until just before Jim was hung.

Q What was the cause of the alarm later? A The disorderly conduct of the militia.

Q How did they cause alarm; what alarm did they produce?

Mr. Corbin. I would like know if she knew any disorderly conduct herself?

Q Well, in point of fact madame, was their an alarm in the neighborhood? A There was, sir.

Q Alarm for what; what were they afraid of? A They were afraid of an attack of the negroes.

Q Did you participate in that alarm? A I did, sir.

Q What did you do in consequence of it to promote your own safety? A I left.

Q Left what? A The neighborhood.

Q Where did you go? A To my father's.

Q Where is that? A In Union district.

Q You were so alarmed by the state of things existing there, that you left your own house and went into another county; what were you afraid of? A I was afraid of having my house burned.

Cross examination by Mr. Corbin.—Q Did you ever hear that Jim Williams made any threats at all? A I did not.

Q And never saw his company near the house? A Yes, sir; often in the night.

The court, at four o'clock, adjourned until eleven o'clock, Thursday morning.

## THIRTEENTH DAY'S PROCEEDINGS, DECEMBER 14.

The Court met, at 11 o'clock, pursuant to adjournment. Hon. Hugh L. Bond, presiding Judge. Hon. George S. Bryan, District Judge, Associate.

Mr. Witherspoon, on behalf of Reuben McCall, in the case of Lawson. Armstrong and others, desired that the Court should receive the affidavit of the Assessor, who was in court, as to the inability of McCall to pay witness fees.

The Court. Let the Assessor make his affidavit.

Mr. Hart desired to offer bail in the case of W. D. Barns.

Mr. Corbin said that Barns was charged with conspiracy, and also, with being in a raid, whipping and offering personal violence to colored people, and suggested that his bail should be the same as in similar cases already passed on.

James A. Saunders and T. J. Gibson were accepted as securities, bail being fixed at \$5,000.

John A. Moroso, witness for the defense, being duly sworn, testified as follows:

Direct examination by Mr. Stanbery.—Q State where you reside? A Charleston.

Q What was your occupation of business in the fall of 1870? A I was editor of the Charleston Courier.

Q You were on the corps of the paper? A Yes, sir.

Q Had you any occasion during that canvass to visit various parts of county and precincts? A Yes, sir.

Q For what purpose? A For the purpose of reporting the progress of the canvass for our paper, the Charleston Courier.

Q Do you mean, reporting speeches that were made during the canvass? A Yes, sir; and writing letters describing the state of the country.

Q In the course of these journeyings had you occasion to visit Yorkville? A Yes, sir; I was in Yorkville and a greater part of York county.

Q What other places than Yorkville were you at? A I was at Chester; I traveled by buggy from Yorkville to Landford, a place on the Catawba river, on the borders of York county; the river divides York and Lancaster; I was also at Rock Hill on the Charlotte, Columbia and Augusta road.

Q How long was this before the election? A About a month, or six weeks previous to the election of 1870.

Q At that election did they vote for members of Congress? A Yes, sir; members of Congress and State officers.

Q Do you say you traveled through this county and surrounding country? A Yes, sir.

Q Was there any violence, or outrages of any sort?

The Court. That will not do, unless you bring it home to the knowledge of these defendants.

Mr. Stanbery. Bring what home?

The Court. The knowledge if any conspiracy was formed to stop these burnings; you must bring that home to the knowledge of the defendants.

Mr. Corbin. We object to this examination on account of its irrelevancy.

Mr. Stanbery. We were about showing that there was a state of order.

The Court. Well, then, go on.

Mr. Stanbery. I was going on when your honor interrupted me.

Q What was the condition of things at Yorkville when you passed through there, and if you saw any

violence, and, if so, what was it? A The only condition of things of which I knew anything was at the time of the canvass; meetings were held at Yorkville; a meeting of Reformers was advertised to be held there, at which I was not present; I was present at Yorkville three days, and during that time there was a great deal of excitement, caused, it seemed to me, the day before the meeting, by reports of the negro militia coming into town; on the morning of the meeting I saw five militiamen armed with Winchester rifles; they were State constables; they came galloping into town before the meeting was called; they proceeded down the street to a place called the militia headquarters, where I understood their arms were kept; at this place there were a kettle and a bass drum, and two men were employed to keep these drums going; the Reform meeting was held at the court house, about fifty yards from this place; these men, who afterwards dismounted, some of whom I afterwards recognized as speakers; they collected a crowd, and they kept up a noise at the meeting of the Reformers, which was held within ear shot; the excitement was caused by the noise they made, and I heard white people expressing much anger at the attempted interruption.

Q Were speeches made by what was called Reform candidates? A Yes, sir; also by Mr. Wallace, the Radical member who was invited to speak.

Q Was it a Reform meeting? A Yes, sir.

Q Who were the Reform speakers? A Judge Carpenter was there; I don't remember whether General Butler was there or not.

Q You said Judge Carpenter was there? A Yes, sir; he was the candidate for Governor, on the Reform ticket; so that his ticket was in opposition to the Republican ticket.

Q Was it the only ticket in opposition to the Republican one? A Yes, sir.

Q Judge Carpenter being a candidate, was there to speak, was he? A Yes, sir; and did speak.

Q Who made the first speech? A A. S. Wallace, I think, but am not quite positive.

Q How long did he speak? A He spoke for some time.

Q Who followed him? A I cannot tell exactly, without reference to my letters.

Q What time was the meeting broken up in consequence of this drum beating? A It was after Mr. Wallace finished speaking, that the meeting was broken up in consequence of the noise of this drum beating; and a riot was imminent, how it was prevented I do not know.

Q You say Mr. Wallace had spoken before the noise commenced? A Yes, sir.

Q Do you recollect the next speaker, and whether he was on the Reform side or not? A When Judge Carpenter began to speak, the uproar became greatest; the uproar was so great that he could not be heard. It was great, not only in consequence of the drum beating, but I noticed that when any colored people would stray across to the Reform meeting, these constables would send out men to bring them in.

Q You say that as the colored people come up within hearing these parties would send out skirmishers to bring them back? A Yes, sir.

Q Did that occur more than once? A Yes, during the whole of the meeting.

Q You say a riot seemed to be imminent? A Yes, sir; in consequence of the interruption of the Reform meeting.

Q Did you hear the language that was used? A I heard language but I am not able to testify what it was.

Q Had any of these men from the barracks arms at the meeting? A Not at the time of the meeting, they were galloping through the streets in the morning.

Q Did you hear what was said by them; did you judge that a riot was imminent by their jestures? A No, sir; I cannot testify as to the substance.

Q Can you give us the substance of what was said; were you under the impression that the language used was to incite a riot? A Yes, sir.

Mr. Corbin. I want to know the significance of this testimony; if they intend to show that this was a meeting of the Ku Klux Klan, we have nothing to say, but if they don't propose to show that the Klan was present, I do not see the relevancy.

Q State whether in that portion of the country, you were present at any other meetings? A I was also present at the meeting at Rockhill.

Q Is that one of the voting precincts of that county; were speeches advertised to be made by Reform candidates at the meeting? Yes, sir.

Q Were the candidates there? A Yes, sir.

Q Was there an attendance of people to hear them? A Yes, sir; a large attendance.

Q What time did they open the meeting? A About 11 o'clock in the morning.

Q Who was present? A Judge Carpenter, Gen. Butler, and Col. McKissick.

Q Had you seen any excitement or disturbance before the meeting? A No, sir; not at that precinct.

Q Who made the first speech? A Col. McKissick.

Q Who made the next speech? A Gen. Butler, and Judge Carpenter the third. I do not desire to be taken down as stating this positively.

Q During these speeches, what took place? A Nothing of any consequence, that I know.

Q Was it quiet there? A Yes, sir.

Q Were they allowed to speak? A Yes, sir.

Q Now what was your next place? A Previous to that I had been to Chester court house, where there was some disturbance.

Q How far is that from Yorkville? A Ten or twelve miles, I think, but I'm only judging from the time it took me to go from Chester to York.

Q What took place at that meeting? A There was a big row.

Mr. Corbin. I fail to see the relevancy or pertinency of this testimony to the issue; I am willing that the counsel for the defense shall have any amount of latitude; I understand the issue in this case is whether these parties banded together a conspiracy to prevent divors persons of African descent from the privilege of voting; we have confined our testimony to that issue; now, in reply, we are having a newspaper reporter on the stand, and I suspect, from the names of witnesses that have been furnished, we shall have the speakers themselves, who participated in the State campaign.

Mr. Stanbery. Your honors will acquit me of any idea or intention of endeavoring to introduce anything immaterial when delay is of such great inconvenience to me; it is not my way of trying a case. The Court. The witness must be confined to material matter.

Mr. Stanbery. We are endeavoring to show that there was no sort of intention to interfere with the elective or voting franchise, which is the thing in controversy; arms were put into the hands of colored people, not of colored people generally, but of colored Radicals, or Republicans, as they were called, in their particular district; we shall show that nobody had interfered with the right of voting,



and that the only interference with the exercise of that right was by themselves. We will show that this political meeting got up by the Reform party was constantly interrupted by them, and that the speakers were put down and assaulted. We expect to show that there was not only the noise of kettle and bass drums, not merely a noisy demonstration, but also that these outside parties who belonged to the other party were determined to put down the right of free speech by noisy demonstrations, dangerous assaults, hurling stones at them, and putting their lives in jeopardy, and preventing the candidate himself from addressing his own party. Our object is to show that there was interference with elective franchise, that this Reform party—the party in the field, were prevented from the exercise of their right, by assaults on the speakers, and interference with the actual business of voting. It will be for us to show that the chief of these militia men was a dangerous character, and a violent man; that he commanded this company, and had a formidable force under him, armed with the best arms of the day, in an inoffensive community, attempting, interrupting with other men's voting in a neighborhood where nothing like Ku Klux had ever been seen; that these men had arms, and the most approved ammunition; and that he was constantly drilling them as if he were preparing them for war; that he had been a soldier in the army of Sherman; that he drilled his men, and threatened again and again injuries to the whites, threatening on an occasion that they should be destroyed from the cradle to the grave; that he came to be regarded in the community as an outlaw and a dangerous man, and that his threats becoming so violent and intimidating, the people saw there was nothing left but to disarm him, and put it out of his power to follow out his evil intention; that this was the state of alarm and intimidation in that community, not only on the part of the colored people, but on the part of the whites; we intend to show that in going upon this raid this man had no idea of interfering with any man's voting privileges; but that he went there in the society of others to get arms; out of the hands of men commanded by such a captain as that, and who were wholly under his command and who followed him implicitly; he was the leading spirit and it was considered wholly unsafe that that man should have the means of carrying out these threats; and that such was the condition of things that not only women, but men were alarmed.

The Court. What was done at these political meetings throughout the country has no relation to this conspiracy; the present is a charge of conspiracy.

Mr. Stanbery. We are charged with interfering with the elective franchise; and now we wish to prove the fact that there was no interfering with the franchise, or at the meetings.

The Court. You may show that there was no disturbance at the polls.

Mr. Stanbery. The next thing is to show that there was no disturbance at the meetings; and the election always begins at the preliminary meeting and we wish to show that there was not the slightest disturbance on our part; and all that there was, came from the other side.

Mr. Corbin. These parties are charged with entering into this conspiracy in March, nearly six months after the canvass to which this disturbance refers; we do not charge, and have never attempted to prove on our side, that these parties did interfere with the elective franchise at the election of 1870.

Mr. Stanbery. Does the gentleman say that he limits himself to the conspiracy commenced on the 8th of march.

Mr. Corbin. It existed on the 8th of March.

Mr. Stanbery. Then it refers back; have we not that testimony relating to the conspiracy as far back as 1863, but the conspiracy the gentleman relies on; the formation of this Klan took place long before, so that it is during the time; the gentleman relied upon that; he says we were interfering with the right to vote; I don't know how to answer this proof, except by testimony like this, to show that instead of interfering with the right to vote and being in conspiracy of that kind there was not a single instance in which the right of a Republican or Radical colored man was interfered with; there were interferences, but they came entirely from the other side; it seems important to us to show that the elections were quiet and orderly.

The Court. We have no objection to that.

Mr. Chamberlain. How is it possible that any interference with any political meetings held in August, 1870, is proved to negative the charges in this indictment; the testimony is not relevant unless it is to negative some charge against them; anything that the defense can show, or any acts or declarations of the Ku Klux, to negative what we have proved, would be legitimate evidence.

The Court. If the Reform party, or any other party, are shown to be identical with the Ku Klux, this line of defense would be legitimate; but how is it legitimate to meet the charges that have been made against the Ku Klux to prove the acts of Republicans or Reformers in a political campaign.

The Court. What do you propose to ask?

Mr. Stanbery. What took place in the way of interference at that meeting.

The Court. Were your parties there?

Mr. Stanbery. I do not know.

The Court. What pertinency has that with the conspiracy?

Mr. Stanbery. Whether they were or not, there was no interference with the voting franchise; we can trace every election around there and show that there was no interruption, so that this conspiracy to interrupt and interfere with the voting franchise is absolutely contradicted by the facts.

The Court. How does it go to negative the fact that a man committed an offense on Monday by showing that he was quiet on Tuesday.

Mr. Stanbery. We show by evidence that he was quiet all the time; that he was not given to any such violence as that; we are going upon the field of presumption, that there was no intention to interfere with the right of the voter, because no acts of that kind have transpired from first to last, and if this is not a material fact on which to rest a presumption against this pretended proof of conspiracy, I do not know what is.

Mr. Chamberlain. The only parties involved in the first or second counts are these defendants or the parties belonging to the organization known as the Ku Klux Klan; now of what avail is it to tell us of the conduct of a crowd who assembled at Yorkville to listen to political speeches, unless there is something to indicate that they were members of the Ku Klux, or that this defendant was there and did something; if the Ku Klux were there, and the gentleman could show they behaved themselves and allowed the negroes to vote, they would connect it with this organization which we are seeking to ferret out; without that it has no possible connection or relevancy; I repeat that the only parties that can be effected by this are those connected with this organization which we have charged as existing in the first count, or with this defendant, whom

we have charged with interfering with Jim Williams; if anybody answering the description of a member of this organization, or the party who went on the Jim Williams raid, were then at McConnellsville or Chester and behaved themselves well, that might be evidence, but is there anything to show—of course the gentlemen do not intend to show that this defendant belonged to the organization which went upon the Jim Williams raid, and that that was the same organization that listened to Judge Carpenter's speech; then how does it negative any evidence as to the purpose of this organization, or the acts of the parties who went on the Jim Williams raid; if they will admit that they were Ku Klux and went to that meeting and behaved themselves and did not interfere, it might go to negative what we have established as to the purpose of this organization.

The Court. It is competent to prove in general that there was no interference at such elections as those parties were present at.

Mr. Chamberlain. We are not indicting the whole community, but certain defendants, and the general conduct of the community is not the issue.

Q. Were you present at any elections held in that part of the county? A. No, sir.

*Cross Examination by Mr. Chamberlain*—Q. You state that there was a good deal of excitement in Yorkville, on the occasion of that meeting, on account of the negro militia? A. Yes, sir.

Q. Did you see any negro militia on that day. A. I do not know that I stated that I did. I stated there was considerable excitement in consequence of the colored people gathering at the place where the militia arms were kept.

Q. Did you not testify, that there was considerable excitement on account of the negro militia. A. There was considerable excitement at the meeting.

Q. Had it anything to do with Jim Williams' company on that occasion?

Q. By Mr. Stanberry. I understood you to say there was alarm throughout the country? A. When I passed through that county they were in great alarm about the militia who were armed and parading about the country at that time; that was the impression on all sides, and they were in a great state of alarm.

Q. By Mr. Chamberlain. Do you say they were in a great state of excitement on account of the negro militia? A. I say they were in a great state of alarm throughout the country.

Q. Was this excitement at Yorkville in consequence of the colored militia? A. I saw no negro militia at Yorkville, the excitement there seemed to be in consequence of the Constabulary to gather up the militia, and the excitement seemed to be created by that fact; the impression conveyed to my mind was that these men came there early in the morning; I think it was in August, directly after the meeting at Chester.

Q. It was, however, in August that you were at Yorkville? A. I think so.

Q. Do you remember the date of the meeting at Chester? A. I do not remember.

RICHARD B. CARPENTER,

A witness for the defense, being duly sworn, testified as follows:

*Direct Examination by Mr. Stanberry*—Q. Were you a candidate at the last fall election for office? A. Yes, sir, for Governor of the State.

Q. Did you, in the course of your travels throughout the State, visit the part of the country about Yorkville and Chester? I did, sir.

Q. What season of the year were you there? A. I am not certain whether it was August or September of 1870; I think it was the latter part of August or the early part of September.

Q. Do you know the fact whether it was before or after the militia companies had been organized and armed in that part of the country? A. It was after, at least many companies had been armed.

Q. Do you know whether or not there was a state of anxiety and alarm on the part of the people in consequence of this fact? A. Yes, sir, there were a good deal of feeling about it, and a good deal of anxiety with some of the people, and a good deal of alarm.

Q. What was the cause and what was the nature of the alarm? A. There were armed companies of militia throughout the country with ammunition distributed, as was understood as if on the eve of battle.

Q. Was this alarm confined to a few, or did it seem to be general? A. There was a good deal of talk about; I do not think the people were, as a general thing, alarmed; it seemed to have more terror to the colored people than the whites in that country.

Q. Do you say the colored people were alarmed? A. Yes, sir; because some were armed and some were not.

Q. Were the colored people alarmed because a part were armed and a part were not? A. Yes, sir; I suppose those not armed were most alarmed; those not armed were more alarmed without doubt; there was a good deal of alarm more or less, among all classes of people, white and colored.

Q. Among the colored people, which part was most alarmed? A. Of course, the Conservative colored people were very much alarmed.

Q. Was it understood that those who were armed all belonged to one party? A. That was the general understanding.

Q. What party was that? A. The party supporting the, then and present State dynasty.

Q. That is the Radical or Republican party; what was the party with which you were connected called? A. It was called the Reform party; the name had no national significance.

Q. Reform of what? A. It was a party for the reform of the State Government; men of all political parties belonged to it; and its object was the reform of the State Government.

Q. Which party was in power in the State Government? A. The Radical party was in.

Q. And it was proposed to reform the party in power? A. It was not proposed to reform that; it was conceived by the gentlemen who acted with me that they were a long way beyond reform.

Q. It was to put other persons in their place? A. Yes, sir; that was the idea.

BILL LINDSAY, COLORED,

Was the next witness called for the defense, who, being duly sworn, testified, as follows:

*Direct Examination by Mr. Stanberry*—Q. Whereabouts do you live in York district? A. On the lower edge.

Q. How far did you live from Jim Williams? A. Three miles and a half.

Q. Did you know him? A. Yes, sir.

Q. For how long? A. About four or five years.

Q. Did you know anything about his having a militia company? A. Yes, sir.

Q. Did you know any members of it? A. I knew some of them.

Q. Who was the Captain? A. Jim Williams was Captain.

Q When was that company formed? A Last year, sir.

Q What time? A I don't know what time.

Q When it was first formed had they any muskets or arms? A No, sir.

Q How long after the company was first formed did they get arms? A It was about two months.

Q After they had arms, did they muster with their arms? A Yes, sir.

Q Do you know if they had any ammunition. A Yes, sir, they got some after they had their arms.

Q At what point was it that ammunition was distributed to the men? A Allen Bratton went to York and got the ammunition and took it out there.

Q What kind of ammunition was it? A Cartridges.

Q Was Bratton a member of the company? A Yes, sir, he was Lieutenant.

Q By whose orders did he get ammunition? A He got it from Mr. Rose at York.

Q Who sent him there to get it? A I think Williams and Tims.

Q How many rounds did each man get? A About three at first.

Q What time was it they got ammunition? A It was in the night, they went over in the night.

Q Was that before the election or after? A It was before the election.

R Did they mostly muster in the day or the night? A They mustered mostly at night.

Q Did they keep on mustering up to the time of the election? A Yes, sir.

Q How often? A Sometimes once and sometimes twice a week.

Q Did you ever have any conversation with Jim Williams about getting ammunition? A Yes, sir.

Q When was it? A He told me he was going to get ammunition from York.

Q What further did he say? A That he was going to kill from the cradle up.

Q When was that? A That was Friday after we went to pay taxes, Friday before March.

Q Where were you going to pay taxes? A At York.

Q Where did you meet together? A He came right up to my house.

Q Did you go to York on foot or on horseback? A On horseback.

Q Did this conversation take place on the road? A Yes, sir.

Q Did he get any ammunition that day? A I don't think he got any that day.

Q When you say Friday before March, do you mean the March when he was killed? A Yes, sir.

Q Do you know whether in that part of the country such threats were made by Williams as you have spoken of? A Yes, sir, there were.

Q Who do you say it was that made these threats? A Jim Williams.

Q What other people spoke of having heard him make this threat? A Michael McCann said so.

Q Did you hear other people speak of it? A Yes, sir.

Q Was it a general thing? A I heard it from other folks that it was a general thing in this neighborhood.

Q Do you mean that people generally understood that Williams had made that threat? A Yes, sir.

Q Up to that time had there been any violence or raids of Ku Klux or anybody else? None; there hadn't been any through there at that time.

Q Had there been any violence at any election at that time? A No, sir.

Q Had you attended any election? A Yes, sir; at McConnellsville.

Q Is that the same place that Rainey attended? A Yes, sir.

Q Was there any interference there? A Not as I know.

Q Was there at any other election you have been at? A I have not been at any but there.

Q Do you cast your vote there? A Yes, sir.

Q Did ever anybody interfere with you? A No, sir.

Q Did any body ever interfere with Rainey when he voted? A Not as I know.

Q Is that the fall election that you speak of? A Yes, sir.

Q By Mr. Johnson. Do you know if there were any fires in that neighborhood up to that time. The Court. We cannot allow but one person to examine a witness.

Q By Mr. Stanbery. Had there been any fires in that part of the country? A Not by us; there was a fire before at Mr. Brattons.

Q How far off did he live? A About half a mile.

Q What was burned? A The gin house and thrashing machine.

Q According to report who burned them? A Jack Brooks did that.

Q Were there any other fires before that? A Not that I know of by us.

Q Was Brooks a colored man? A Yes, sir.

Q Did you hear of any, out side of your part of the County, at Yorkville? A Yes, sir; I heard of that above Yorkville, but none on this side.

Q Then you heard of a number of fires occurring about Yorkville? A Yes, sir.

Q According to public report who were supposed to be a party to it?

Question objected to and withdrawn.

Q Were you at home on the night that Jim Williams was hung? A Yes, sir.

Q Did any party call at your house that night? A Yes, sir.

Q Who were they? A Ku Klux, they said.

Q Were they disguised? A No, sir; they just came natural.

Q How many came to your house? A Two.

Q What did they do? A They asked me if there were any guns there. I said no. I told them I did not have any. I told them I had one old gun there. "Take it down," said they, "and hand it to the men outside." The man outside halloed: "It's a double-barrel gun; give it back to him again."

Q What kind of gun did they want? A. The guns that had straps on them.

Q When you produced your squirrel rifle, they said they did not want that? A Yes, sir.

Q Did they say anything about voting? A. Not a word.

Q Are you certain that this is the same night that Williams was hung? A. Yes, sir; that was the same night.

Q Did you see any more of them? A. I saw them on the road.

Q How many do you think there were on the road? A. It looked like a great many—perhaps twenty or thirty.

Q Was there anybody else at your house that night? A. Yes, sir.

Q Who else came there? A. A militia party came up there.

Q How many of them were there? A. About fifteen or twenty.

Q What did they do? A. The head man halloed out to come out quick; "Come out quick," said he. I told him I was under no obligation to come out quick; he said I must come out damn quick; they asked me if there had been any Ku Klux there; then they asked which way they went; up the road, said I; "Slip on your shoes," said he; I said I had no right to go; I didn't want to leave my home that time of night; "By G-d," said he, "you have to go or die." I told him that there was but one time to die; that would be now, said he, if I didn't march. Henry Haynes then cocked his gun on me; they then mounted the fence; I was outside; they went back into the house, and one of them

took my gun and took it away; they sent it back to me the next day.

Q. Were they part of the colored militia who came? A. Yes, sir.

Q. Did you attend the same polls of election that any of these militia men did? A. Yes, sir, at the same place.

Q. Was it at McConnellsville? A. Yes, sir.

Q. Did this company, or any part of them, take their arms to the election? A. Not as I know of; they had their accoutrements.

Q. Do you mean their bayonets? A. Yes, sir.

Q. What did they do with their guns? A. I don't know; I was driving a wagon till about 4 o'clock, when I went over there.

Q. But you say they had their side arms on? A. Yes, sir; they had their guns the night before drilling; that was the night before the election that they were drilling.

Q. Where was that? A. Right there in Mr. Wallace's old field.

Q. Do you know if any orders were given them as to what was to be done? A. I do not know.

Q. Was the full company out that night? A. Yes, sir.

Q. Did you see some of them at the election? A. I seen some of them.

Q. Were they in squads? A. Yes, sir; some seven or eight at a time; in right smart squads.

Q. Had they their side arms on? A. Yes, sir, the whole of them.

Q. You say you got to the election late in the afternoon? A. It was about four o'clock in the afternoon when I got there.

Q. This house that was burned, did it belong to colored or white people? A. I don't know which.

*Cross Examination by Mr. Corbin.*—Q. Are you known as "Gentleman Bill"? A. Yes, sir.

Q. Whose place do you live on? A. John S. Bratton's.

Q. You say that Jim Williams said on Friday before March that he was going to kill "from the cradle up." A. Yes, sir, from the cradle up; he did not say white or black.

Q. Did he say why he was going to do this? A. Because they said he was to give up his arms.

Q. Who said this? A. Mr. Russell brought him down to give up his arms; he said he did not mean to give them up except from Mr. Scott.

Q. Who was that, Gov. Scott? A. Yes, sir.

Q. What was the reason he gave for "killing from the cradle up"? A. I do not know; he did not give me any explanation.

Q. Do you think he would? A. I don't think he could; I know it was out of any man's power to do it.

Q. Was he in fun when he said so? A. He seemed to be in earnest when he said so.

Q. Who have you ever told that to? A. I have told it to a heap of people.

Q. Name some one to whom you told it? A. I told it to Lowry; I told him at the same time I told others.

Q. When was that? A. When I was on the road to York with him.

Q. Was it before Williams was killed? A. It was about ten days before.

Q. Who else did you tell? A. I told Major Wallace and Minor McConnell.

Q. When was that? A. When we were going to church Sunday.

Q. When was that? A. The Sunday after Jim told me.

Q. Who else? A. Ave Thompson; that was after Jim was dead.

Q. Anybody else? A. I think that was all; I may have told more, but I disremember whether I did or not.

Q. Did Jim Williams say anything about the Ku Klux at that time? A. Not at that time to me.

Q. Had you heard anything about the Ku Klux? A. Yes, sir, but they hadn't been in our town; I heard they had been in the neighborhood; they hadn't been out this side of York then.

Q. Did you know the colored people lying out around there? A. Yes, sir; they went out about the church, and lay out. I do not know what they were after.

Q. Do you know that they laid out because they feared the Ku Klux Klan? A. I do not think they did then.

Q. Did they lay out before the Ku Klux came who murdered Williams? A. Not as I know of.

Q. Did you ever lay out? A. Never a night.

Q. Were you afraid of the Ku Klux? A. I was not; no more scared than I am now.

Q. What is your politics? A. Do you mean when the Ku Klux came? I had no politics when the Ku Klux came.

Q. What were your politics before that time? A. We didn't have any politics before that.

Q. Are you not a Democrat? A. Yes, sir. I'm a Democrat.

Q. You vote the Democratic ticket? A. Yes, sir; all the time.

Q. Why did you vote the Democratic ticket?

Mr. Johnson. What has that to do with the case; but we have no objection if the court has none.

Q. You have always been a Democrat? A. Yes, sir; all the time.

Q. You were not afraid of the Ku Klux; you say? A. I was not a bit scared when they came there that night.

Q. You didn't think they would hurt you; did you? A. I didn't know whether they would or not, I staid in the house.

Q. They didn't ask you anything about your politics? A. Not a bit.

Q. You are pretty well known in that country, are you not? A. Yes, sir.

Q. And your politics pretty well known? A. Well, I think so, sir.

Q. Did you hear other colored men around there talk of being afraid of the Ku Klux? A. Yes, I heard them talk about it.

Q. Who did you hear? A. Almost all in the neighborhood who lay out of their houses.

Q. Did they ask you how they would be safe? A. No, sir.

Q. What did you tell them? A. I did not tell them anything.

Q. Didn't you tell them that if they would say that they would be Democrats that they would have no trouble? A. I never told them any such thing.

Q. You slept in your house while all the rest were sleeping out? A. Yes, sir; all the time.

Q. And felt perfectly safe? A. Perfectly so, trusted to Providence about that.

Q. Did you know of any other colored man who slept right around you in their houses all the time? A. I think Winsor McConnell did.

Q. Is he a Democrat? A. Yes, sir.

Q. How about Dave Thompson? A. I think he slept in his house all the time.

Q. Is he a Democrat? A. Yes, sir.

Q. Do you know of any Republican colored man who slept in their houses all the time? A. No, sir; I do not.

Q. When was that fire at John S. Bratton's? A. I disremember what time it was. I know it was this year; I disremember what time in the month, for I don't know, it was on a Sunday night though.

Q. Was it this summer or fall? A. This summer, near about "laying by time." Laying by the crop.

Q. Was it just before last court at York? A. Yes, sir.

Q. Was the man tried at the court there who was supposed to have done it? A. Yes, sir.

Q. What was his name? A. Jack Brooks.

Q. Was he convicted? A. Yes, sir.

Q. Who were the men that came to your house that night the Ku Klux visited you? A. Andy Tims was one.

Q. No, but of the Ku Klux? A. I don't know, sir; I don't know them.

Q. They did not have any disguises on? A. No, sir; they did not.

Q. How do you know they were Ku Klux? A. They said so; asked if I ever seen any. I told them I did not; said here they was.

Q. What else? A. The way it first started they halloed wake up nigger, wake up nigger, I am coming—open the door, open the door, G—d d—m it, open the door. I was standing right by the door again they got there.

Q. Did Mr. J. S. Bratton tell you that the Ku Klux wouldn't disturb you? A. No, sir; didn't open his mouth to me about it no way.

Q. Did he after this Jim Williams was hung tell you so? A. No, sir; he did not.

Q. Now, when Andy Tims, with his militia men came to your house that night, what did he want you

to go with them for? Wanted to go help hunt the Ku Klux; that is what he did.

Q. He didn't come to hurt you? A. The intention looked like, when he spoke—looked like; he was more Ku Klux than they was. Told me I had to go or die.

Q. Nobody shot you? A. No, sir.

Q. Nor shot at you? A. No, sir; one cocked a gun on me.

Q. Andy wanted to hunt up the Ku Klux? A. That's what he said.

Q. What for? A. He didn't say, sir, to me, what for.

Q. Did you know what the Ku Klux had been doing? A. I heard what he said; he didn't tell me then, but I heard afterwards, when I went over to the mill that day what was done; they had hung Jim Williams.

Q. Andy Tims was hunting them up? A. That's what he said, sir.

Q. And he took your gun? A. Yes, sir, he took my gun.

Q. Brought it back next day? A. Yes, sir, brought it home next day; I wasn't home when he brought it; but it was there when I came home.

Q. Did you ever know Jim Williams to do anything bad in that community? A. No, sir, I did not.

Q. Good reputation? A. Yes, sir, as far as I knowed.

JAMES LONG, WHITE,

Was the next witness called for the defense, who, being duly sworn, testified as follows:

*Direct Examination by Mr. Stanbery*—Q. Where do you reside? A. In York.

Y. How far from Jim Williams? A. About five miles.

Q. Did you know him? A. Yes, sir, I knowed him.

Q. Have you talked with him and heard him talk. A. I have talked many a time and heard him talk.

Q. Now state whether you had any conversation with him or had any talk of this shortly before he was killed and what it was? A. I heard him talking, sir, at the blacksmith shop of Dr. Loves.

Q. Were other parties there? A. Yes, sir.

Q. How many others? A. Don't know; the two men that worked in the shop, and some three or four black men besides; there was one white man, but I am not certain whether he was gone when we had this talk or not.

Q. The blacksmith was there? A. Yes, sir.

Q. And his two hands? A. Yes, sir.

Q. And some colored men? A. Some colored men.

Q. What did he say? A. Said he had been down here a little while before that.

Q. Down where? A. Down to Columbia; been among the members of the Legislature; he said they wasn't worth one damn, but only for drinking and gambling.

Mr. Corbin. Who? A. Members of the Legislature; and he said as for Governor Scott an Neagle, they were both damned old rascals; they had not done what they promised, and he said that he had said to his men the other day at the old field, at his muster ground, that he wanted them to come to the field, and the longest pole knocked the persimmon down, and the strongest man eat them, and kill from the cradle up; that is what he said, and he had as much sense as any damned white man in York district.

Q. When you speak about his men, what men did he refer to? A. He did not name any names.

Q. What did you understand him to refer to?

Mr. Corbin. No.

A. He named no names, I thought it was his company.

Mr. Corbin. You have no business to say that.

Q. When was he going to do that? A. He didn't say when; he said he named to them that he wanted them to do it—no time set particular.

Q. Did he repeat what he said to them? A. He said that was what he said at his muster ground the other day.

Q. How long was that before his death? A. This was on the 4th of March, and I think it was about about the 6th of March he was hung, I think.

Q. Well, sir, when you left them did you mention it to other persons. A. I wasn't anywhere for several days; I was talking about it after I went home, but I don't think I was away from home.

B. But you mentioned it at home? A. Yes, sir.

Q. How many persons are there about your house who constitute your family? A. There are some four or five.

Q. To whom you communicated? A. Yes, sir.

Q. As soon as you went home? A. I don't know as soon as I went home, but some time in the course of a day or two.

Q. Had there been any violence or outbreaks in that part of the country at that time? A. Well, there had been fears about their mustering and shooting, but I don't know any particular facts no way.

Q. Do you know who did that shooting? A. They were mustering at nights.

Q. Did you hear shooting at nights? A. Just regular.

Q. Near your house? A. Yes, sir; heard it clear to where I live.

Q. Who was shooting? A. Well, I don't know who they was shooting; might have been his company; might have been some others, I can't say.

Q. Do you mean? A. Every night or two, and heard a drum too.

Q. Was there any alarm in your part of the country? A. Folks were pretty much scared.

Q. What about—what was the cause of alarm? A. They did not know but what the niggers might come with their arms and kill them.

Q. Was that pretty general among the white people? A. It was, sir, in my neighborhood.

Q. As to the women, were they frightened? A. Yes, sir, they were worse than the men.

Q. Do you know of their getting together up in that neighborhood? A. No, sir, I did not.

Q. You know there was that state of alarm? A. No, sir.

Q. Do you know of any fires? A. I know some fires up above us; some gin houses were burned.

Q. How far above you? A. About six miles.

Q. Towards Yorkville? A. No, sir, rather to the right of Yorkville.

What fires? A. Nealy, Miller's and Hugh Warren's gin house was burned, both tolerably close together, not more than a mile apart.

Q. What other? A. Well, I heard of Dr. Ellison having houses burned.

*Cross Examination by Mr. Corbin.*—Q. How did Jim Williams come to tell you that he was going to kill from the cradle up? A. Did not tell me, just told the folks that.

Q. Who was he telling that to? A. To these other niggers; I was gitting outside of the house, by the side of the door.

Q. Who were there? A. I don't know the names of the other niggers, only two.

Q. Name them? A. The men working in the shop named Jeff Bratton, and the other one used to belong to a Bratton too, by the name of Jim; the other boys I didn't know.

Q What was Jim Williams talking about? A Well, I don't know what he was particular talking about before I came into that conversation.

Q You did not hear any of that? A Well, I heard him talking, but I didn't mind anything he was saying much, until he came onto that.

Q Didn't you hear that he was saying if the Ku Klux came around about his men, that he would kill other persons? A No, sir, I did not hear him say that.

Q Do you know whether he said that or not? A I don't think he said it while I staid.

Q Do you know? A I know he did not while I staid.

Q And yet you didn't hear his conversation until he got to the place where he was going to "kill from the cradle up?" A Never heard him say that.

Q But did you not have the conversation until he came to that? A No, sir; I said I didn't mind what he was saying.

Q How do you know but what he said it? A That was the first I heard him talking about fighting or anything of the sort.

Q Do you know now, after your attention is called to that fact? A I did not say that I was there.

Q And yet did you hear all that he said while you were there? A I did not say I heard all.

Q How do you know whether he said it or not? A Well, I think if he had said it I would have heard it.

Q But you don't recollect? A I do not, sir.

Q Anything except that he was going to kill from the cradle up? A Yes, sir, I told you more than that.

Q You say you went home that night. A Yes, sir, I went home before night, before twelve o'clock.

Q You mentioned it to your family? A Don't know as I did that day, I told you.

Q When did you mention it? A I cannot tell you exactly; it might have been a day or two before I mentioned it.

Q You were not very much frightened then about it? A No, sir, I was not no ways frightened myself about it.

Q You did not think there was any occasion for alarm? A I didn't know what there might be.

Q Well, but if you had thought there was occasion for alarm, you would have spoken at once about it. A Don't know whether I would or not, I didn't think of it.

Q If you had felt that your family and your neighbors were in danger of being murdered you would have told it, wouldn't you? A Well, I might, or might not; for I didn't think of it.

Q Did you ever know of Jim Williams killing any body? A Never heard of his killing any person in my life.

Q Did he have the reputation of being a man that would kill people? A Well folks talked so.

Q You never heard of his doing it? A Never heard of his murdering any person.

Q You say this was on the 4th of March? A On the 4th of March.

Q And when was Jim killed? A On the 6th, I think.

Q Now, do you know whether you ever mentioned it to anybody, what he said, until after he was killed? A I named it before he was killed.

Q Who did you name it to? A I think I told Nicholas Johnson of it.

Q When did you tell him? A I couldn't mind exactly.

Q How long before Jim was killed? A Maybe that day, and maybe it might have been two days.

Q Or it might have been that day? A I cannot say.

Q. You don't know? A. No, sir; I ain't going to take an oath to anything I can't tell.

Q. Did you go and tell this gentleman, in order to alarm him and put him on his guard? A. No, sir; not to alarm him.

Q. Were the white people in that country generally armed? A. No, sir, they had no arms; there was some little old shot gun.

Q. Yet every person had a gun of some sort, did they not? A. Well, a heap hadn't any; I didn't have any, I know.

Q. Didn't they have a pistol? A. No, sir.

Q. If you had been very much alarmed you would have got a gun, wouldn't you? A. Maybe I couldn't have got it; might not be able to buy it; nobody would not have given it to me.

Q. This shooting around at nights, do you know whether it was white men or colored men? A. I don't know who it was; but suppose it to be Jim Williams' company.

Q. Don't know anything about it? A. He was all the one in that direction where the shooting was, that had a company and drum beating there.

Q. Did you know the Ku Klux were raiding about that country? A. I heard of their raiding, for I did never see one in my life.

Q. But you heard of their raiding long before that? A. Yes, sir; I had heard of their raiding before that.

Q. You heard of the colored people lying out about you there? A. They never did come through our neighborhood.

Q. Never disturbed you? A. Never in our neighborhood.

Q. How near you? A. Never come nearer than a mile; the big road was the nearest that I heard of their coming.

Q. Do you know whether or not the negroes were generally alarmed about the K. K. raiding around them? A. I don't think they were—not bad.

Q. Were they at all? A. Some that I heard talk didn't talk as though they were alarmed.

Q. But I am asking as a fact whether a state of terror did not exist among the colored people from the Ku Klux? A. Some were alarmed and some were not.

Q. Were not the Republicans among the men that were alarmed? A. No, sir; there was a heap that was not. The biggest part were not alarmed.

Q. Don't you think, as a matter of fact, that the colored people were more alarmed from the K. K. than the white people were from the colored people? A. I don't think they were.

Q. How many more white people in that county than colored? A. I don't know.

Q. There are more white people than colored? A. I expect there is at this time.

Q. Were there not as much as two or three white men to one colored man? A. No, sir; I think not.

Q. What do you think the proportion is? A. I don't know.

Q. But you think there are more white people than colored? A. I think there is.

Q. Don't you think the white people are quite as able to take care of themselves as the colored people. A. If they had the means.

The Court. That won't do.

Mr. Corbin. The point is simply this: These distinguished gentlemen on the other side of the table are trying to show a state of alarm among the white people.

The Court. You have a perfect right to show a state of alarm among them; but when you go to build up an argument—

Mr. Corbin. But we propose to show it is a fact.

The Court. Well, we don't think it necessary.

Mr. Corbin. We don't insist on it. We don't think any of it is of very much importance.

Mr. Johnson. What do you ask it for?

Mr. Corbin. The counsel on the other side has led us into this sort of business.

Q. What about Mr. Ellison's fire? you said you had heard of it? A. I heard of it, but don't know anything about it.

Q. Did you or not understand that that fire is charged upon white people? A. I didn't never hear it charged upon them;

Q. Never heard it charged upon anybody? A. No, sir; I never heard it charged on any one.

*Re-Direct Examination.*—Q. You never asked as to this man's manner when he made these threats. Now describe his manner? A. He was mad.  
Q. What evidence did he give? A. I knowed he was mad from his talk when he started out.

JOHN B. FUDGE

was the next witness called on the part of the defense, who being duly sworn testified as follows:

*Direct Examination by Mr. Stanbery.*—Q. Do you live near this Jim Williams? A. I do.

Q. How far from him? A. About a mile and a half from him.

Q. Do you know the man? A. Yes, sir.

Q. Know him well? A. Yes, sir.

Q. Did you have a talk with him at the election last October? A. Yes, sir, I did, about a week or ten days before.

Q. Where at? A. My own house.

Q. He had come there? A. Yes, sir.

Q. What business had he? A. I don't know any business. He first came and called, and I was told that there was a colored man at the gate wanted to see me, and I walked around to see who it was. When I got around the corner of the house, I saw it was Jim Williams. I walked up and spoke to him, and he did to me.

Q. Was the conversation there at the gate? A. At my gate.

Q. Now tell us what it was. A. I then asked him if he wanted to see me on any business, and he said he wanted to have a talk with me; and I said to him, if it is on politics, says I, I don't wish to talk; and his reply was, it was.

Q. Were you of opposite politics from him? What were your politics? A. Well, mine was for—of course mine was for the Democratic party.

Q. You said you didn't want to talk any politics? A. Yes, sir.

Q. What did he say? A. He says you must. Says I no, no. He then said to me, Mr. Fudge I would like very well if you and I could vote together in the next election, which is coming off shortly; I said very well, we can. He then said, yes; but he says I reckon you would want me to vote your way; said I you can. I just said to him this. Says I, you can—we can vote together. He says that would be for Judge Carpenter and General Butler, and he says I won't see them in hell before I would. Oh, well, says I, Jim it don't matter particularly; I reckon you will allow me the same chance. He said yes.

The Court. What has this to do with it?

Mr. Stanbery. We have not done with the conversation.

The Court. Let us get to the point.

Mr. Stanbery. It is not my fault that he don't get to it any sooner.

The Court. What is the point about, which you wish to have him testify?

Mr. Stanbery. The point of direct threats.

The Court. Let us hear what the threats are.

The Court. Go on.

A. He then said to me—he says, in case, I think was the words—in case we don't succeed in carrying the next election, he says, we will kill from the cradle to the grave, and we will apply the torch in every direction; we will lay waste to this country generally. Says I, you go on, says go on now, and at that he turned his mule, and as he turned his mule he said, “I can go to Gov. Scott and get as much money as I want, and you can't,” says I go on home.

Q. What was his manner, serious or how? A. I think he was serious; he spoke cool and deliberate.

Q. He did? A. He did.

Q. What election was he speaking about?

Mr. Corbin. Last October.

Q. How long was this before the election? A. I can't say positive; it was a week or ten days, I think.

Q. Where did “Williams” come from to that part of the country. Where had he been before. Did you ever hear him say? A. Before when?

Q. Before he came to that part of the country to live? A. I never heard him say. Well, in '66, I got acquainted with him first. Mr. Wilson, a neighbor of mine, sent for me to go cut oats for him one day—

Judge Bond. Oh, dear me alive! Mr. Stanbery, can't you ask the question?

The Witness. I was telling him where I got acquainted with this nigger.

*Cross-Examination by Mr. Corbin.*—Q. How long do you say you had known Jim Williams? A. Since '66.

Q. Live within a mile and a half of him? A. Yes, sir; I suppose within a mile and a half.

Q. Did you ever know Jim Williams to kill or attempt to kill? A. No, sir; I never knew him to be in any rows of killing people.

Q. What was his reputation as an orderly, quiet citizen? A. Well, I would term him bad.

Q. What is that? A. I would his reputation.

Q. When did you think his reputation bad first? A. I thought so when he was talking to me.

Q. You had never known anything bad before that? A. Well, I had heard things.

Q. But what was his general character in the community—good or bad? A. Well, it was considered bad.

Q. Do you know whether it was considered bad through the community? A. It was.

Q. When; at first? A. I would say that last year was the first time.

Q. What time last year? A. I cannot exactly designate the time, but it was some time through the summer or fall.

Q. He was a leading politician, was he? A. Yes, sir; thought to be.

Q. Leading man among the colored people. A. Yes, sir.

Q. Leading Republican among the colored people? A. Well, as to being a leader amongst them, I was not certain of that, but I took him to be so.

Q. Made speeches did he; Republican speeches? A. I never heard of him making but one speech in my life.

Q. Held in high esteem among the colored people? Yes, sir.

Q. Were you alarmed at him when he said what you say he said to you; were you frightened yourself? A. For my own part?

Q. Yes? A. In my own person do you mean?

Q. Yes? A. Well there was but one man there, and I was but one you know.

Q. Exactly? A. Well as to being frightened at one man I never have been yet, not much.

Q. What Jim Williams said then did not scare you? A. In regards to my family it did.

Q. Did it scare you yourself? A. Not particularly alone.

Q. Well, you were included in that list of persons between the cradle and the grave? A. Yes, sir; I was, I was.

Q. Did you think that Jim Williams was going to do that thing? A. I did. I thought he exactly meant what he said.

Q. That he was going to kill from the cradle to the grave? A. I did. I thought he would do precisely what he said.

Q. What did you do to prevent him from killing you and your family A. I did nothing.

Q. Did you keep a guard about your family to protect them from Jim Williams? A. No, sir; I thought that I was guard enough while I would last, for him alone.

Q. Did you expect that Jim was going to do that as his business from that time everywhere? A. As a matter of course I expected it; he told me

Q. Did you expect him to do it? A. As a matter of course I expected him to do it; he told me that he would do it.

Q. I want to know whether you did or not? A. I did.

Q. And yet you did nothing to protect your family? A. Me?

Q. Yes. A. No, sir, I did nothing to protect myself. I thought I would be there myself.

Q. You expected Jim Williams to undertake that business alone? A. As to that I can't say; one man would be enough to burn my house up, and my family in it.

Q. Did you take any steps to have him arrested or bound over to keep the peace? A. No, sir, I expected to be home pretty much all the time myself.

Q. And you would use your eyes night and day? A. No, sir, I expected to sleep.



Q. You didn't lay out in consequence of that threat or have your family lay out? A. No, sir—while I was there—I was there every night.

Q. Did you ever hear anybody say that Jim Williams did carry out that threat before he was killed, or attempted to carry it out? A. What is the question?

Q. I ask you if you ever heard of him attempting to carry out that threat, to kill from the cradle to the grave, at any time before he was killed. A. I never heard it, only from him—he told me that he intended to do it.

Q. I ask you, did you ever hear that he did do it, or attempted to do it? A. No, I never heard of him committing.

Q. Did you go to an organization of the Ku Klux Klan to protect yourself from Jim Williams? A. Never did.

Q. Did you join the Klan? A. Never did.  
Q. You didn't think it necessary to go and join the Ku Klux to protect yourself from Jim Williams? A. Never did.

Q. Are not a member yourself? A. No, sir.

Q. You knew of K. K.'s raiding round the country, during the winter? A. I heard of it.

Q. Long before Jim Williams was killed? A. I won't say positive whether it was long or not; it was some time before.

Q. Do you know whether the colored people were lying out around there? A. I was not.

Q. Didn't you understand that to be a fact? A. That was hearsay. I heard it, but do not know it to be so.

Q. You never saw them laying out? A. Never did.

Q. But you understood it was so? A. Never did.

The question was objected to, and not pressed.

*Re-direct Examination.*—Q. You have said that this Jim Williams stood in great respect by the colored people around? A. Very much.

Q. Do you know whether or not he had great influence over the colored people? A. He did.

Q. Was he a passive or violent man in temper?

The Court. Mr. Stanbery don't make a man state his opinions as facts.

Mr. Stanbery. He is giving the character of the man. The other side called it out.

The Court. No, he was giving the general reputation of the man. Now you ask what sort of influence this man had, and that cannot possibly be passing.

Mr. Stanbery. I am following the gentleman. He has got from the witness the fact that he was respected by his colored brethren. I am following it up, and that has led me to it.

Q. You stated that he had made a political speech. Were you present when he made that speech? A. Sir?

Mr. Corbin. You were not present?

Q. What do you say?

Mr. Corbin. You were not present when he made that speech? A. No, sir.

A. F. Hinson was the next witness called on the part of the defense, who, being duly sworn, testified as follows:

*Direct Examination by Mr. Stanbery.*—Q. Are you acquainted with this Jim Williams? A. Yes, sir.

Q. How long had you known him? A. The last four or five years, sir.

Q. Did you talk with him last fall? A. Yes, sir.

Q. Before or after the election? A. After the election, sir.

Q. Where was it? A. At my own house.

Q. How far from where he lived? A. I suppose about three miles, sir, to the best of my knowledge.

Q. Tell us what the talk was? A. He came to my house one morning—about the middle of last February, or the latter part of it—and appeared to be very much out of humor. I spoke to him and asked him, says I, "what's the matter this morning?" "Well," he says, "there is some of my company wanting to give up their guns."

Well, I told him, I thought that would be a very good thing, and he says "no." Says he, "If I don't get what has been promised me," says he, "I will take from the cradle," and says, "there has been no burning done to what there will be," and rode right off and left me immediately.

Q. What was his manner? A. Well, he appeared to be very much out of humor.

Q. Had there been any burning in that neighborhood at that time? A. Before that there had been burning; I don't know whether right in the immediate neighborhood; some distance off; four or five miles probably.

Q. He did not state what had been promised him? A. No, sir, I don't know what that was. He didn't give me time to ask him that question. He rode off immediately after making those remarks.

*Cross examination by Mr. Corbin.*—Q. Where do you live? A. I live in York Dis trict.

Q. How far from York, and how far from Jim Williams? A. Nine miles from Yorkville.

Q. What road? A. On Armstrong's Ford road.

Q. How far from Jim Williams? A. About three miles.

Q. You and Jim Williams on friendly terms?

A. Yes, sir.

Q. Why did he make this remark to you? A. Well, he rode up to my house and appeared to be very much out of humor. He was in company with some one else; and I heard him talking going up the road; he and his friend parted where the road leads off, and he came up to my shop, and I asked him what was wrong, then he just made those remarks that I have just related.

Q. How long was this before he was killed. A. Well I don't—it was in the latter part of February, as well as I remember—that he made those remarks to me; and I expect it was some time in March when he was hung.

Q. How long—how many days? A. Probably some fifteen or twenty days; something like that.

Q. Was it before or after a company of United States troops came to Yorkville? A. Well, I don't remember as to that.

Q. Do you remember when they came there? A. Yes, sir; I don't remember the time; I remember about their coming there.

Q. You remember the fact? A. Yes, sir.

Q. Now do you remember whether this remark was made before or after that company came there? A. No, sir, I don't.

Q. Do you know whether it was before or after the order by Governor Scott as to collecting arms? A. No, sir, I don't remember that either.

Q. Don't know anything about it? A. No, sir, I do not.

Q. What was he out of humor about? A. He told me it was because some of his men were wanting to give up their guns, and he didn't approve of it.

Q. Did he give you any explanation of what he meant when he said if he didn't get what he wanted that he would do so and so? A. No, sir, he didn't explain that point; in fact he didn't give me time to ask the question.

Q. You don't know what he meant by that? A. No, sir.

Q. Do you know whether he wanted anything of anybody at that time? A. No, sir, I do not.

Q. Do you know whether he demanded anything of the white people generally at that time? A. No, sir; nothing in particular; I don't, sir.

Q. Did he mean white people or colored people he was going to kill? A. White people.

Q. Did he say white? A. No, sir.

Q. How do you know? A. I judged on that.

Q. He did not say white or colored did he? A. No, sir, he never made no respect of any color?

Q. Do you know whether he attempted to kill any one? A. No, sir, I don't think that he did.

Q. Never heard that he did? A. No, sir, not that I know of.

Q. What was his character and reputation in that neighborhood heretofore, since you have known him; character as a quiet, orderly citizen? A. Well, sir, I don't know anything much about his character; nothing more, except about his character that he was a captain of the militia, and was said to be a very bad boy.

Q. What was his general reputation? A. That is his general reputation.

Q. Was a very bad boy? A. Yes, sir.

Q. Bad for what? A. Well, that he was very impulsive and tried to carry out any point that he had taken sides with.

Q. What point—what kind of a point? A. None in particular, but anything that he took a notion to—anything that he sided with.

Q. That he was very impulsive? Do I understand you that he was a pretty independent negro? A. Yes, sir; pretty independent.

Q. And stood up for his rights? A. Well, he claimed to do that.

Q. And he was called, consequently, a pretty bad boy? A. Yes, sir; to the best of my knowledge.

Q. You never knew of his doing any of those acts—did you? A. No, sir; I did not.

Q. Ever hear of his stealing anything? A. No, sir.

Q. Ever hear of his burning anybody's house? A. No, sir.

Q. Any criminal conduct against the laws of the country? A. Nothing more than making threats.

Q. You heard him make the threats? A. Yes, sir.

Q. Was you frightened by what he said that day? A. Yes, sir; somewhat.

Q. Did you take any precautions to protect yourself against him? A. No, sir; not any particular, I didn't.

Q. Or to protect your family? A. Yes, sir.

Q. What precautions did you take to protect your family? A. Well, I always had. When I laid down, I was always prepared for any assault.

Q. Did you ever expect any assault from Jim Williams? A. No I don't know as to that.

Q. Did you expect it? A. I didn't know, probably, but what he may; he made these threats to me.

Q. Answer directly whether you did or did not, did you expect him to come and murder yourself and family? A. I don't know.

Mr. Corbin. We insist upon an answer, if the court please.

Judge Bryan. He said he might do so.  
Mr. Corbin. That does not answer it; the question is did you expect Jim Williams to come and kill you or your family? A. No, sir; I cannot say that positive.

Q. Did you ever have any fears from the Ku Klux? A. No, sir; not particularly. I have heard that there was threats made on me by them.

Q. For what? A. Well, sir; for keeping spirits in my house for sale.

Q. Did you have any fear of them? A. Yes, sir; I had a while.

Q. Were they raiding around the country more or less? A. They were I believe; that I heard, I don't know it to be true.

Q. In what portions of the county did you know they were raiding? A. I heard of them being in different portions of the county.

Objection.  
Objection sustained.

Q. When did you have this fear of the Ku Klux? A. Some time along last spring, sir.

Q. What time in the spring? A. I believe it was in, as well as I remember, it was in March perhaps.

Q. That is about the time Jim Williams was killed? A. Yes, sir.

Q. Had you more fear of the Ku Klux than you had of Jim Williams? A. No, sir, not in particular I didn't.

Q. Which did you fear the most, Jim Williams or the Ku Klux? A. Well, sir, I didn't know which—to tell the truth, sir.

Q. Did you join the K. K. for your protection. Never joined them? A. Well, I joined a society in '68.

Q. What were they called? A. There was no name for it. There was a time appointed to make an organization of some sort, and I went to the place appointed, and there was but two or three men that went there, and the thing just dropped.

Q. Who were the men that met you to form the society? A. Capt. Crawford.

Q. Neil Crawford? A. Yes, sir. Mr. Kuykendall.

Q. Where was that meeting? A. It was in Mr. Swann's land.

The Court. What has that to do with it.

Q. You went there to form an association, but it fell through. A. Yes, sir.

Q. Any constitution and by-laws read there? A. No, sir, not at all.

Mr. Johnson. We object.

Q. What did you propose to have—that is what I want to know—what was the name of the thing? A. As I told you before there was no name given.

Q. What did you understand the name was to be? A. It was protection for the country.

Q. I didn't ask what it was going to be—I asked the name of it. A. I don't know sir.

Q. You don't know what the name was to be? A. In York county, sir. Not then I didn't.

JOHN J. LOWRY

was the next witness called on the part of the defense, who being duly sworn, testified as follows:

*Direct Examination, by Mr. Corbin.*—Q. Where do you reside—at what place? A. About a mile and a half from the Court House.

Q. On a plantation? A. A little farm.

Q. Were you residing there in the fall of 1870? A. Yes, sir.

Q. How long prior to that? A. I have been residing there since '55.

Q. And you reside there still? A. Yes, sir.

Q. Now state whether you have been at elections there. A. Yes, sir, I have been to many since the one of last year.

Q. That fall election? A. Yes, sir.

Q. Where at? A. Up in the village of York.

Q. Was there any interference: Mr. Chamberlain. Wait.

The Court. Unless you show that your party was there.

Mr. Stanbery. The Democratic party was there. The Court. That will not do—unless you mean to show that they were identified with the conspiracy.

Mr. Stanbery. Can't I prove the fact that there was no disturbance there?

The Court. I don't see the pertinency to the case.

Q. State condition of the neighborhood. In the first place was there any case of violence or incendiarism there, that Fall, and the Winter and Spring following? Were there any fires?

Mr. Corbin. I don't see any more pertinency to that question than the other.

Q. Did you see any man at that election who has been arraigned as a Ku Klux. A. I have not sir. I am not acquainted with those men; those young men.

Q. But you see them now? A. I am not acquainted with those young men; they have grown up so fast that I would not remember them, if I would see them out. I know the old men.

Q. You don't recollect seeing any man at that election who is charged with being a Ku Klux? A. Do you mean any one in this house?

Mr. Corbin. No, that will not do.

Q. Did you see Major Owens there?

Mr. Corbin. He is not one of these parties that you are trying here.

Q. Did you see "Major Avery," there? A. I don't recollect about seeing Avery there.

Mr. Chamberlain objected to the question on the ground that it was irrelevant.

Q. Was Dr. Bratton there? A. Yes, I think he was there, sir. I saw him in the afternoon, because I stopped at his house.

Q. Your impression is that he was there? A. I stopped at his house.

[Counsel for the Government objected to these questions on the ground that Bratton was not included in the indictment.]

The Court held the question to be admissible.

Q. Now, state whether there was any interference.

The Court. That must be confined entirely to somebody whom the prosecution has identified with the conspiracy.

Mr. Johnson. We are now confining it to Dr. Bratton.

Q. Now, state whether there was any interference with anybody's right to vote on that day?

Mr. Corbin. That is not the question.

Q. Now, will you answer?

Mr. Corbin. What is the question?

Q. Whether there was any interference with the right to vote on that day.

Mr. Corbin. No, sir; that is not the question ruled in.

Mr. Johnson. Ask the Court.

Mr. Corbin. On the part of these people, or Dr. Bratton?

Mr. Johnson. Well, on the part of Mr. Bratton; if there was no interference on the part of anybody, there was no interference on the part of Dr. Bratton.

Mr. Chamberlain. The question must be confined to this conspiracy.

Q. Was there any interference by any one or by Dr. Bratton?

Mr. Chamberlain. Which?

Q. Did Dr. Bratton interfere with anybody's right to vote at that election? A. I did not see, nor I did not hear him interfere; I was up there only an hour or so.

Q. What you were there? A. Yes, sir; in the vicinity of Yorkville.

Q. Of Yorkville? A. Yes, sir, there was a state of alarm from the time that Scott armed the blacks.

Q. Was it from that cause? A. Yes, sir, I think it was from that cause.

Q. What was the nature of the alarm? A. Well, there was a feeling of insecurity and uneasiness, from having arms in the hands of those people—the blacks.

Q. Did that generally pervade the white people that were not armed? A. Yes, sir.

Q. From this cause? A. Sometime after they were armed I saw a subscription in the village to subscribe to get these army rifles—Winchester rifles; it was after they were armed that I saw this subscription.

Q. Was there or not any state of alarm among the white people in that neighborhood?

The Court. You mean a petition?

A. No, sir, it was called a subscription for those Winchester rifles.

Mr. Corbin. For whom? A. For the white people; only for defense, mind you.

Q. Was it a common question among the white people? A. Yes, sir, it was a very common topic of conversation.

Mr. Corbin. What was a common topic? A. Their being armed and the state of the country, from the fact that they had arms and ammunition.

Q. Now, about the state of the country afterwards. Were there any burnings? A. Yes, sir; there were a good many.

Q. About that part of the country? A. Well, just where I lived there were none. The only burning that I know of, from where I live from the village or down to the Chester line, was Mrs. Rainey's gin house; but up the other side, there was plenty of burning; but in that area of country, that was the only one that was burned.

Q. Those houses that were burnt—who did they belong to? A. I cannot recollect, perhaps, all of them, because took no account; but I think the first house burned was Dr. Ellison's saw mill and gin house and, perhaps, some straw house.

Q. Is there any other house? A. Yes, sir; one Mr. Hiram Thomason, and Mrs. Thomason and Hugh Warren.

Q. White people? A. Yes, sir; all white people and in Ebenezer, Dr. J. M. Lowry; a gin house for him was burned.

Q. Can you give us any idea of the number? A. Well, I can't do it exactly; have heard it estimated at about twelve or fifteen houses—twelve or fourteen or fifteen or somewhere there. There might have been over that, but I didn't hear.

Q. Had you heard or was it the common talk that threats had been used? A. Well, the first threats that I heard was, I don't know as I can state the time; but in Yorkville, one night, they had some disturbance with the negroes. They went in the hotel and got the arms.

Q. That is, the colored people—the colored people went to Yorkville? A. Oh, no! those living in Yorkville went and got the arms. There was some little quarrel that had taken place in the street between Dr. Thompson and a colored man.

Q. Do you know this of your own knowledge? A. I wasn't there; I didn't know for two days afterwards.

Q. You say you know that there were threats, that the people were alarmed on account of threats. Now tell us any of those threats?

Mr. Corbin. Did you hear this.

A. What threats—what do you mean?

Q. Why threats made by colored people towards the whites? A. Now, I heard this from a man one day, a white man, and I saw him after and asked him about it. I met him in the road and said to him that I heard that he had been sleeping out of his house, and if so he could come down and stay with me.

Mr. Chamberlain. He is not stating a fact.

The Court. State the facts.

Q. My question is whether in the neighborhood among those people? A. There was a state of alarm in consequence of those threats.

Q. Do you know that there was then a state of alarm there in consequence of those threats? A. There were—from fires—incendiary fires—threats from them.

Q. There were threats of that character. A. There were.

Q. You understood that threats—that burnings would take place? A. Yes, sir.

Q. Did you know Jim Rainey? A. Yes sir.

Q. How long had you known him. A. Sixteen or eighteen years, I suppose.

Q. What was the character of the man for order? A. Well, as far as I knew, he had sustained up to the time he got those guns a very good character, just as good as any colored man would sustain. He was idle; didn't work much.

Q. After he got those guns, what was his reputation? A. Well I think he was very foolish, after he got the guns; very foolish.

Q. Had you any conversation with him? A. Yes, sir.

Q. State what it was? A. In the summer after Mrs. Rainey's gin house was destroyed. A few day's afterwards I saw him and asked him if he wouldn't send the guns again to Gov. Scott, that Mrs. Rainey and others were uneasy, and she said she was going away from home; I asked him if he wouldn't send the guns to Gov. Scott, that he had no use for them, that they would not answer for hunting, and that they were an army gun. His reply was that he would consult the company, and asked me why we didn't want them to be armed. I told him it was reported around there that he threatened to do, and asked if it was so. He replied that I need feel no uneasiness, or any of our own people, that he didn't intend to hurt them. I asked him who was his own people? He said he meant the family and other relations of Mrs. Rainey; and I asked him then, that if he commenced any such things, he couldn't control the company. He said he could, and I saw him no more for two or three weeks. I told him then you didn't give up the guns. He said that the company did not want him to give them up, and that he didn't want to. I told him from your threats you might be hurt, and for two or three weeks you had better get out of the way, if you keep the guns. He didn't deny the threats.

Q. What did he say in reply to that?

Mr. Corbin. Threats by whom? A. High threats, sir. I asked him if it was so—that he made those threats. He said in reply, that you need not feel any uneasiness, there is not anybody going to hurt you; but I told him that I was not the one, it was the people down there. This was twelve or fourteen miles from where I lived; he didn't deny the threats, nor he didn't say that he made threats; after that, when I saw him he seemed to be angry. I had these conversations with him in two or three weeks; after that I asked him again, and asked him and said to him that the people were uneasy down where he lived; it was not where I lived; but I had a plantation down there. I asked him if he wouldn't give the guns up, that it would allay the uneasiness in the country from his threats; and he told me that he would not, after consulting his company. He said that he had been in Sherman's army. I told him he was not with him, had only straggled off with Sherman's army, and that he knew how to carry on war; this is what he said, and that he had as much right to arm anybody as any of General Sherman's officers; he arrested one man, they said, or it was reported he had, and I asked if he had, and he said he had the same right as any of General Sherman's officers; I told him he hadn't.

Q. Was he talking seriously at this time? A. He was a little angry, he was a little excited from some cause then at the other conversation I had with him; he went up to York, I think, Thursday or Thursday week before he was hung, and I asked him then if he would give the guns up; he told me he would; I told him that if he would I would let him have something to haul them up to the Sheriff.

Cross Examined by Mr. Corbin—Q. You say the last conversation you had with Jim Williams he told you he would give up the arms? A. He did.

Q. How long was that before he was killed? A. It was Thursday before or Thursday week, I don't know which; it was some short time; seven or eight days, but on Thursday, I know.

Q. Now, Mr. Lowry did he tell you at that time that the Ku Klux were raiding about the country and the colored people were greatly disturbed? A. There was no Ku Klux over in that point, no riding in that area of country.

Q. But there had been in other portions of the country? A. In the western portion, southwestern and northwestern, and some in the eastern and northeastern, but in that area that was the only raid.

Q. But they had been raiding? A. Yes, sir; I heard, so mind you.

Q. Certainly I don't understand you were present. Did Jim Williams express any fear of a raid down there? A. Yes, sir; he did.

Q. Did he say the people were alarmed down there? A. Didn't hear anything of that kind.

Q. Colored people on account of these raids? A. No he never said that. The last conversation I had with him though, when he told me that he would give the arms up, he said that he was—he said that he found that what I had been telling him was so, and he was then willing to give the guns up; he didn't say that any one else was alarmed.

Q. Was it a fact within your knowledge, that the colored people were very much alarmed over the county? A. Yes, sir; they were.

Q. On account of the Ku Klux raids? A. On my own plantation they were—but now I recollect there was a panic.

Q. They were alarmed? A. They were alarmed. Q. They slept out? A. I could not restore confidence to them, no way.

Q. How long did they sleep out last winter? A. I don't know; it may have been once in a while, and it may have been once a week.

Q. How long did this panic among the colored people last? A. About two months, I think.

Q. Commencing when? A. Well, just over in the vicinity where I lived, and from there on down to the line, it commenced, I suppose, in February.

Q. When did it commence in the other parts of the county? A. In the upper parts of the county—in the extreme upper part—northeastern part—it commenced in November. That was the time this Tom Roundtree nigger was killed.

Q. That was in November? A. I think it was somewhere about that time—the first of November, I think, or the first of December.

Q. Had any of those burnings taken place before these raidings, in any part of the county? A. I cannot say positively, but I think old Dr. Ellison's. I can't state positively, though, as to that fact.

Q. That is the only one, if there was any, that you know of? A. I think that was the first one.

Now, haven't you understood that the burning was done by white men? A. Yes; by white Republicans, if you want the truth.

Q. You have heard it was done by white Republicans? A. Yes, sir.

Q. Not by negroes? A. Yes, sir; you can get men from that district who heard them say they would apply the torch.

Q. For what reason? A. Well, I can't tell you anything else more than just the general opinion, that there was an antagonism between the Union League and this K. K. organization.

Q. Have you understood from Mr. Ellison himself? A. I have not seen Dr. Ellison, the old Doctor, for some time.

Q. Have you understood from anybody that that burning was in retaliation for something done by "Dr. Ellison," a personal quarrel? A. No, sir, I never heard anything of that.

Q. But the other burnings were after the raiding commenced? A. Yes, sir, they were done after and I will answer if you want to know; a man who was a Republican told me that he saved the town of Yorkville from ashes twice, and I took it for granted when he said it was in retaliation.

Q. Who was it? A. Milus Johnson; and the time he said it I took it for granted that it was in retaliation.

Q. Who was going to burn it? A. I never asked him; I just said: You gentlemen must have had it up for consultation. He did not answer.

Q. When did he say he saved it? A. Didn't say the time. It was in December that I had the conversation.

Q. Any action by the authorities in reference to it? A. I never heard any. Oh! yes, there was too. I don't know whether it was the authorities or not, but the people they guarded the place for sometime with arms, and they got the citizens to come out. I was asked to come up to help to guard it.

Q. Any other official action taken in reference to it? A. I never heard of any; if there was, I didn't know it.

Q. When was this? A. In last December I told him that I heard he was sleeping out and I told him he could come down and stay in my house. He was apprehensive for some talk by the Ku Klux, and he pulled out some papers signed K. K. K., and showed them to me.

Q. What were those papers? A. I didn't look at the papers. I just saw they were signed K. K. K., in big letters, and he said they were threatening letter.

Q. You saw K. K. K. A. I saw only the three K's, but it was written in a very bad hand.

Q. Didn't read the papers? A. I did not.

Q. He said they were threatening letters? A. He said they were.

Q. And he was lying out in consequence of them? A. I told him I heard he was; he didn't say he was; I told him if he was he could come and sleep at my house.

Q. What for—for protection? A. Yes, sir.

Q. Did he tell you who it was that was going to burn the town? A. He did not say who it was, and I did not ask him.

Q. Did you say that he was in a state of alarm or not? A. No; he appeared to be cool and deliberate; but he seemed apprehensive. He said he was not scared.

Q. Was he a Republican or Democrat? A. A Republican, sir.

Q. In what time in the Fall was that? A. In December.

Q. In reference to Jim Williams, you say he sustained a good character, generally, where he lived? A. Well, he did not live right close to me; it is about twelve miles from me; he was a carriage driver for Sam Rainey, who was often at my house, and in that way I knew Jim Rainey.

Q. Now, from your knowledge of Jim Rainey, did you consider him a bad man—a man who would carry out threats of burning and pillage and slaughter? A. Yes, sir; I would, sir, under evil influences; but under other influences, he would not.

Q. He was a bright, spirited man? A. No, sir; he was a humble nigger, only he was ignorant.

Q. Did you ever know of his ever committing anything bad? No, sir; I don't think I ever heard anything bad about him. He always treated me very politely; but, as he said, he always called myself one of his family people.

Q. You felt no apprehension from him personally; from him alone? A. Oh, no, not from him alone, but he started his company with those arms in his hands on expeditions that he claimed he had a right to do; I would have felt then, but if I had happened on just alone I would not.

Q. Do you know why he and his company didn't want to give up their arms? A. No, sir, I do not.

Q. Don't you know that they wanted to retain them to protect themselves against the Ku Klux? A. There was no Ku Klux, I tell you, in that whole country.

Q. But you say that they were in almost all parts of the county; was not that the report? A. Yes, sir.

Q. Do you mean to say right where he lived? A. I mean to say from between Yorkville—between the Concord road and the creek. That area of country.

Q. How big an area was there? A. It is from five miles one way; say eight miles by four—teen.

Q. It did turn out though, that the Ku Klux went down there in force? A. Yes, but they were Ku Kluxed from the other part of the district.

Q. Were the negroes lying out? A. In that neighborhood?

Q. Yes. A. I cannot say, sir. As for that, I lived ten miles from there. There was a panic among the negroes on the plantation that I have hired, about five and a half miles from the village.

Q. What direction from the village was Jim Rainey living? A. Right south, on the Chester road. His house was about one hundred yards from the road.

Q. Wasn't that right in the area—within fourteen miles by eight—that you spoke of? A. What place?

Q. Your place? A. It was in the area that I spoke of, yes, sir.

Q. Then you know that the negroes were frightened within that area? A. Just around my plantation.

Q. But not down where he lived? A. I don't know.

Q. Mr. Lowry, don't you understand that Jim Williams himself was reluctant to give up the arms because of this panic that existed among the colored people? A. I don't know, sir; I recollect this one expression to me, all he said on the subject; he said that the other captains were cowards who gave up their guns; they had given up their arms, and they were cowards; but he when I first saw him was willing to give them up.

Q. But along towards March he was not willing to give them up? A. Yes, sir, but Thursday or Thursday week before he was hung he went to the village, and told me that he was willing to give them up.

Q. Did you advise him to go away? A. Yes, sir, I did.

Q. Why? A. I thought it was best from what I heard.

Q. From whom? A. I cannot name any special one; only this general report.

Q. How did you understand from the general report that he was in danger of these Ku Klux organizations? A. It was from the talk of his threats.

Q. And you advised him to leave the country for a while? A. I advised him to go and stay two or three weeks, until the excitement was over.

Q. He didn't go so far as you know? A. No, sir; he told me he would but he didn't do it.

#### TESTIMONY OF DAVID THOMASSON.

David Thomasson was the next witness for the defense; he was sworn and testified as follows:

*Direct Examination by Mr. Stanbery.*—Q. Were you acquainted with Jim Williams? A. Yes, sir; I was.

Q. Did you know any thing about the colored company which was under his command? A. No, sir; I did not; didn't belong to it.

It was here discovered that the prisoner was absent and proceedings were suspended until his return.

Mr. Stanbery.—Mr. Lowry, we shall want you again; will you require him to go out while this witness is examined.

The Court. You had better finish Mr. Lowry first.

Mr. Stanbery. I propose to do that.

#### MR. LOWRY RECALLED.

Mr. Lowry was then recalled, and testified as follows:

Q. Mr. Lowry, in that interview did you communicate to Mr. Rainey the fact that it was understood that he had made threats? A. I communicated to him in the first and second interview.

Q. What threats did you tell him it was understood he had made? A. Yes, sir; I told him.

Q. What were they? A. The first interview I had with him I told him that I heard threats that he would take his company, and he would start out with them; and he would kill from the chil-

dren up, or from the cradle up, and I just said to him that could not be so; and he turned off and didn't answer me.

Q. At the second interview did you repeat it to him? A. Yes, sir; I saw him right close home, and I had met him in the road, and I told him I had heard talk and was still uneasy about him—his threats, and I wanted him to give the guns up.

Q. Did you again repeat what the threats were? A. Yes, sir; I did.

Q. What did he say? A. He said he said so, and if these white people he says didn't let him alone—some of them had been interfering with him; I asked him who they was, and he said Captain Crawford and Mendinball; he said these white people had been interfering with him, and I asked him what white people, and he specified those two; and if they didn't let him alone that he would have his company out here some morning, and when the sun rose there wouldn't be anybody in the country; and he went on to say, that the Government—the yankees as he called them, had promised him forty acres of land and they hadn't given it to him, and he said that if war had to take place that he would have a whole plantation; I told him that he had no right to carry on war; he said that captains in General Sherman's army had the right to do it, and he had the same right; he had as he called it a paper from Governor Scott that authorized him to carry it on.

Mr. Corbin. Carry on what? A. War! war! just the same as he said General Sherman and his Captains could; that was the second interview.

Q. Now at the third interview? A. He told me he would give the guns up.

Mr. Corbin. Wasn't going to carry on war? A. No, he was a little uneasy in the matter.

#### TESTIMONY OF DAVID THOMASSON RESUMED.

Q. You say you were acquainted with Williams? A. Yes, sir.

Q. How far do you live from him? A. About six miles.

Q. Had you any talk with him before his death? A. No, sir, not very much; only one time me and him had a talk at a grog shop.

Q. Whereabouts? A. About a mile of where I live.

Q. State what it was? A. Me and him got to talking with one another about arresting one of the citizens, and he said that he intended to sweep from the "cradle up," because he had the means to do it with.

Mr. Corbin. Sweep the cradle; there is nothing wrong about that.

Q. Is that all that he said? A. That is all the discourse that me and him had.

Q. What citizen was it he spoke of his having arrested? A. Mendinball, sir.

Q. Did he state where he arrested him?

Mr. Corbin. Let it be of your own knowledge, my friend.

Q. What did he tell you about arresting Mendinball? A. Nothing particular; only me and him was drinking and got to joking, and I got to talking to him about arresting Mendinball, and he said yes he intended to sweep from the cradle up, because he had the means to do so.

Mr. Corbin. I suppose he had a broom.

Q. Do you know the fact that he arrested Mendinball? A. No, sir; I do not know, but I had heard.

Mr. Corbin. No; stop there?

Q. Did you hear Mr. Rainey yourself? A. No, sir; I did not.

*Cross Examination by Mr. Corbin.*—Q You belong to the Democratic party? A I don't know what party I belong to.

Q You voted the Democratic ticket? A I did.

Q You were never raided on by the Ku Klux? A No, sir.

Q You didn't feel afraid of them? A No, sir; I was under no obligations to feel afraid of them.

Q Do you know Hector Love? A Yes, sir, I do.

Q Do you know whether he was afraid of the Ku Klux? A No, sir; I do not.

Don't you know that he laid our nights? A No, sir; not to my knowledge.

Q Did you ever have any talk with him about the Ku Klux? A No, sir; I did not.

Q You certain about that? A Yes, sir; I'm certain about that.

Q Do you remember telling Hector that if he would join the Democratic party he would not be troubled? A I told you that once in York, that I never told him that.

Q Do you say so now? A Yes, sir; I do.

Q You didn't tell him that? A I never told him that.

Q Is he a pretty good man? A I never knew anything bad about Hector.

Q He is a Republican, ain't he? A I never asked him that.

Q Don't you know he voted the Republican ticket? A I cannot swear that, because me and him wasn't at the ballot box together, to my knowing.

Q What was it you told me in York about it? A About what?

Q About your talk with Hector Love? A What was it?

Q Yes? A I don't mind.

Q Did you ever see me in York at all? A Yes, sir, I saw you there in Colonel McCaw's house; I know you.

Mr. Corbin. Col. McCaw's house?

Mr. Stanbery. Yes; I'm trying to locate myself.

Q What did you tell Col. Merrill there about this conversation with Hector Love? A Didn't I tell Col. Merrill there that I never told Hector Love that.

Q Don't ask me, but tell; I am not on the witness stand? A I told Col. Merrill that I never visited Hector Love.

Q Did you ever tell him anything about it at all? A Of course I did.

Q Tell us what it was? A Col. Merrill asked me if I didn't try to persuade Hector Love to change his politics and to join mine and there would be no danger of Ku Klux, and I told him I didn't.

Mr. Stanbery. Col. Merrill asked you what? A He asked me if I didn't try to persuade Hector Love to change his politics and join me, and join the night meetings, and the Ku Klux would not hurt Democrats, and I told him I didn't.

Q You saw the Ku Klux? A No, sir.

Q They visited you? A No, sir; if they were in the neighborhood where I lived I don't know.

*Re direct Examination.*—Q Were you put under arrest? Yes, sir.

Q How did you go before Major Murrill?

Mr. Corbin. We object.

Mr. Chamberlain. Go on; we don't care.

Q You were arrested? A Yes, sir.

Q Who arrested you? A The soldiers from York arrested me; I was put in jail and staid in jail three days, and then I was put in the guard house, and staid there until I reported to Major Merrell.

Q Then what took place; what was the charge? A That was the charge that I spoke of just now.

Q Who told you that was the charge? A Major Merrill never told me that was the charge, but he

asked me if I did not hold night meetings, and tried to get Hector Love to change his politics and join mine; and the Ku Klux wasn't going to hurt Democrats; he never told me any other charges he had against me.

Q Were you dismissed then? Yes sir; I was.

*Re cross Examination.*—Q Were you not charged with being a Ku Klux yourself? A No, sir; not to my knowledge.

Q Do you know that Hector Love charged you with being a Ku Klux? A No, sir; I don't.

#### TESTIMONY OF MINOR MCCONNELL.

Minor McConnell (colored) was the next witness called for the defense, testified as follows:

*Direct Examination by Mr. Stanbery.*—Q Were you acquainted with Jim Rainey? A Yes, sir.

Q State if at any time before his being hung you talked with him? A Yes, sir; I had a talk with him on the Sunday before he was hung—in the evening.

Q When did you understand he was hung? A On Monday night; I talked to him on Sunday night awhile before sun-down.

Q Whereabouts was it? A At my house.

Q Where was he going? A He was going home; he had been to Philadelphia preaching.

Q And going home from that church, he passed your house? A Yes, sir; and stopped there and talked to me a good while.

Q What talk had he in reference to any thing going on around? A He said—he told me that he was going to Ku Kluxing, and the people and me would see mighty work done then; and he said too he arrested Mr. Mendenhall, and he arrested him after dark; and if it had not have been, that he would have killed him; and then on Monday morning some of his company had passed my house.

The Court. That won't do.

Witness. Monday morning some of his company passed my house.

Q Was he with them? A No, sir; he was not with them.

Q Who was to do this mighty work? A He was allowed to take his company and do it, that was what he told me.

Q Did he explain to you what this mighty work was? A He didn't explain any more than that.

Q Then what? A Then he allowed the people and me myself would see mighty work when he took his company and went to Ku Kluxing.

Q Had you heard of any threats that he had made? A Yes, sir, I had heard threats what he had made.

Q What kind? A That he would go out and kill from the cradle up.

Q You heard that report? A Heard of it.

Q You didn't hear him say that? A No, sir, I never heard him say that, he told two other ones though.

Mr. Chamberlain. Wait.

Q Was it a report in the neighborhood? A Yes, sir, it was,

Q Who was this Crawford that had prevented from killing Mendenhall? A Ed. Crawford.

Q Do you know the man; there was such a man? A Yes, sir, there was, I know him.

Q What position had he? A He beared a good character; he was a friendly man to both white and black, and black and white both liked him.

Q Did he tell you how Crawford prevented him? A Crawford went Mendenhall's bail.

Q Stop; do you know? A That is what I know; he told me that.

Q Did he arrest him with his company or not? A

Yes, sir, with his company, and when Crawford went his bail he let it stand until Monday morning and took part of his company and went to York with them.

Mr. Chamberlain. Do you know anything about this yourself? A Yes, sir, I seen the company coming up past my house to York.

Q What did he tell you about arresting him? A He said if Crawford hadn't went his bail he would have killed him.

Q Did Rainey tell you what he arrested him for? A He was coming out of his field and he was said to be drunk amongst the company.

Mr. Corbin. Who was drunk? A Mendinhal, and he was coming out of his field, and he and one what they call Horace, he struck him somehow or other.

Mr. Corbin. Who struck him? A Mendinhal and him fell out, then they all fell on him and beat him; he said about twenty of them jumped on him and beat him.

Mr. Corbin. I understood Mr. Mendinhal struck one of his men.

Mr. Stanbery. And he arrested him?

Mr. Corbin. He had a right to.

Q Do you know Gunn—Kirkland Gunn? A Yes, sir; I know him.

Q Have you lived in the neighborhood with him? A Yes, sir; I lived in the neighborhood where he lives, not very far apart; he lives above Oliver church.

Q What is his character for truth and veracity?

The Court. What is his general reputation?

Mr. Corbin. In the first place, whether he knows him? A I know the man.

The Court. But do you know what his general reputation is among his neighbors, not what you know, but what the neighbors know? A Well the neighbors knows all of him, in my neighborhood; they know right smart about him.

Q What do they say of him? A They don't say much of him.

Q How does he stand as a man of truth? A Nobody never hardly took his word.

*Cross-Examination by Mr. Corbin.*—Q You are a good Democrat, are you Minor? A Yes, sir; I am a Democrat.

Q You voted the Democratic ticket? A Yes, sir; always voted that ticket.

Q Where's Ned Crawford now? A Well, Ned Crawford, he is near Yorkville, about a mile off the public road from Bob Linsey's.

Q Is he there now? A I don't know whether he is there now or not, I ain't been there for some time, myself.

Q Do you know that he left there about a month ago, and hasn't come back?

Mr. Stanbery. We object to that. Do you know that he ran away? A I don't know; I don't know whether he ran away or not.

Mr. Johnson. We object to it as irrelevant.

The Court. It has nothing to do with it.

Q You belong to a Democratic club? A No, sir; I don't belong to no club; I am a Democrat without any club.

Q Most of the Democrats in that county had a club; were you afraid of the Ku Klux? A No, sir; I wasn't afraid of them.

Q Why not? A They never bothered me none; I wasn't afraid of nothing but the militia; I was afraid of that.

Q You knew that the other colored people were afraid of the Ku Klux? A Yes, sir; I knew that.

Q All through January and February last? A Yes, sir.

Q And March; have they got done being afraid of them now? A Well, I don't know.

Q Were they afraid of them three weeks ago, when you were home? A I don't know sir, not as I know of, sir.

Q Do you know when they got over being afraid of the Ku Klux? A No, sir; I don't know when they got over it.

Q You don't know whether they are over it yet, do you? A I can't say nothing about that.

Q Do you know they used to lay out all about you there last winter? A Yes, sir; I heard some of them say that they laid out.

Did they use to come to your house for safety, some of them? A No, sir; none came to me to protect them.

Q Did they used to come around there so as to be safe at night? A No, sir; they did not.

Q Are you sure about that? A Certainly.

Q Did you never tell them that you could take care of them if they would be good Democrats? A No, sir.

Q You did not? A No, sir.

Q You say they never visited you at all, and you were not afraid of them? A Who?

Mr. Corbin. That is all right, you may come down.

Adjourned.

#### FOURTEENTH DAY'S PROCEEDINGS, DECEMBER 15.

The Court met, pursuant to adjournment, Hon. Hugh L. Bond presiding; Associate Justice, Hon. George S. Bryan.

##### TESTIMONY OF WILLIAM BRATTON.

William Bratton, (colored,) a witness for the defense, being duly sworn, testified as follows:

*Examination-in-Chief by Mr. Stanbery.*—Q. Where do you reside? A. In York district.

Q. Did you know Jim Williams? A. Yes, sir; I was well acquainted with him.

Q. Were you at any time a member of his militia company? A. Yes, sir; I was a private.

Q. Were you at any time an officer of his company? A. Yes, sir. Before he drew his arms, I was First Lieutenant; when he drew the arms, I was a private in the ranks.

Q. How did it happen that you were reduced in the ranks?

Question objected to as irrelevant.

Mr. Stanbery said the intention was to show that he was reduced on account of his politics.

Objection sustained.

Q. Had you any conversation with Jim Williams before his death? A. Yes, sir; several times.

Q. What were those conversations? A. In those conversations with Williams, he made threats that he would rule the country, and, if he could do it in no other way, he intended to Ku Klux the white ladies and children, gin houses and barns. He said if he could not rule it in that way, that he would kill from the cradle up.

Q. Where was it you heard him make these threats? A. At John Bratton's.

Q. Who was present when he made these threats? A. No person but he and myself.

Q. When was that? A. I do not know; it was along in January.

Q. Were you a member of his company at that time? A. Yes, sir.

Q. Was that the only occasion on which you heard him make those threats? A. That was the only time.

Q. What was his manner at that time? A. Only just in an angry manner.

Q. Was that all the talk you had at that time?



A. Yes, sir; but I have heard him make the same threat over and over several times.

Q. Whereabouts were those threats made? A. It was always at Mr. Bratton's. He was on Mr. Bratton's plantation.

Q. How far from there did he live? A. About two miles.

Q. Was he often at Mr. Bratton's plantation? A. Yes, sir; very often.

Q. Were you and he intimate? A. Yes, sir, of course; we were raised together. We once both belonged to Mr. Bratton.

Q. Did you mention the fact that he made these threats to other people? A. Yes, sir; I did.

Q. How long before he was hung was it that he made those threats? A. It was along in January; about the last of January.

*Cross examination by Mr. Corbin.*—Q. Are you a colored or a white man? A. I have always passed for a colored man.

Q. You did not like it very much when you were deposited in the company? A. Not very much.

Q. Were you offended with Jim Williams when he deposited you? A. Not at all; it did not matter to me.

Q. Were you not mad with Williams and the company? A. No, sir; it did not disturb me.

Q. When you heard Jim Williams say this, you had heard about the Ku Klux, had you not? A. Yes, sir.

Q. How long had they been raiding about before that? A. I do not know.

Q. Was it a long or a short time? A. It was not very long.

Q. Did Jim Williams talk about the Ku Klux at that time? A. Yes, sir; he had a good deal to talk about them. That was the cause of his making the threats. He said the Ku Klux came down into that settlement, and bothered the colored people; that he would commence Ku Kluxing white women and children; gin-houses, barns and stables with fire, and if he was in power, and if he could rule the State in no other way, that he had the means of carrying on war, and if he carry on war he would kill from the cradle up.

TESTIMONY OF SCOTT WILSON.

Scott Wilson, witness for defense, being duly sworn, testified as follows:

*Examination-in-Chief by Mr. Stanbery.*—Q. Where do you live? A. I live in York county.

Q. Do you know Jim Williams? A. Yes, sir, I do.

Q. Did you have any conversation with him shortly before he was hung? A. I had been intimate with him; he worked on my place about two and a half years; he lived within three or four hundred yards of my house; I think the last conversation of any length I had with him was at Christmas; we had perhaps a three or four hours' conversation; he had been down here to see Gov. Scott; as he told me, he had gone down, he said, for the purpose of handing in his resignation; I asked him if he was going to quit mustering, and if he could get away from Mr. Bratton I would allow him to come back and live with me.

Q. State if you ever heard him make threats on any occasion? A. The only threats I heard him make were against white men; he said he had lived a while among the Yankees, and didn't like them; he preferred living among our own people, and he would be damned if he would vote for any white man; if there was a white man's name on the ticket he would cut it off.

Q. Is that the only threat you heard him make? A. That was the only threat I heard him make, that he would not vote for a white man.

Q. Have you heard of threats that he had made? A. Yes, sir.

Question objected to; objection sustained.

Q. State whether there were such rumors afloat? A. I have heard it said by parties that they heard him make threats; it was a general rumor over the country, about burnings and murder.

Q. Were the people in a state of panic and alarm? A. Yes, sir, they were very much alarmed. They thought they would have their property insured; that was my condition.

Q. At that time had there been any raids of K. K. in that part of the country? A. There was only one raid in that neighborhood; none before or none since.

*Cross Examination by Mr. Corbin.*—Q. How do you know that fact? A. I never heard of any.

Q. Are you a member of the Ku Klux Klan? A. No, sir, I do not think there was one in the neighborhood.

Q. You don't know anything about it, do you? A. No, sir.

Q. Were not their operations in the night, as far as you know? A. No, sir. But if they had been in my neighborhood I would have heard of them.

Q. Were you out at night watching for them? A. No, sir.

Q. How do you know then, that they were not out every night? A. I never heard of them.

Q. How about their operations out in the country? A. I live near the line, and I suppose I don't go to York more than once a year.

Q. You know the Ku Klux were reported raiding about the county about that time? A. Not of our knowledge.

Q. Do you know that Jim Williams made any threats? A. No, sir, not to my knowledge; I never heard him directly.

Q. What was the common reports of the Ku Klux operations in that country? A. On the northwestern side, there were reports of them.

Q. When did you first hear of them? A. It was, I think, in January.

Q. Did you ever hear of Jim Williams burning any buildings? A. I heard of him receiving bribes for the purpose of burning.

Q. Please to answer my question; who was it bribed him? A. I heard it was Mr. Rose.

Q. Did you know anything about it? A. No, sir; I didn't.

Q. Did you ever hear of his burning a ginhouse, or Ku Kluxing women and children? A. No, sir; I never heard of that.

Q. Were you not in fear of them; what did you do to protect yourself from him? A. I did not do anything to protect myself individually; I had my property insured to protect it from fire.

Did you never have it insured before? A. Never sir, till the ginhouse was burned near us.

Q. Did you ever lay out at night for fear his company would come and kill you? A. We have watched at nights.

Q. Did you lay out in the woods and hide away? A. No, sir, we never hid away.

Q. Did you, or not, know that the colored people laid out? A. Not of my own knowledge. I had one or two in my employ, and they did not lay out.

Q. Did you understand that they did lay out, all about you? A. Not those in my employ, or my nearest neighbors.

Q. Did you tell your colored people they would not be raided on if they staid at home? A. No, sir.

Q. You did not feel afraid of the Ku Klux yourself? A. No, sir, I do not know that I did.

Q. You voted the Democratic ticket a year ago, did you not? A. Partly.

Q. Did you vote the Republican ticket? A. I voted the Reform ticket.

Q. Did you consider that a Democratic or Republican ticket? A. There were some Republicans on it.

Q. Judge Carpenter was on it, was he not? A. Yes, sir.

Testimony objected to.

Mr. Corbin. There is good reason for asking that question. We have shown that the Ku Klux were raiding on Republicans. We would like to find a Democrat that was raided on.

W. H. ATKINS,

a witness for defense, being duly sworn, testified as follows.

*Examination in chief by Mr. Stanbery.*—Q. Where do you live? A. At York district, about nine miles this side.

Q. Did you know Jim Williams? A. I knew a little about him.

Q. Did you live near him? A. I lived about five miles from him.

Q. Have you heard him make any threats? A. Yes, sir.

Q. At What time? A. That was about last February.

Q. Where were these threats made? A. I heard him make these threats at Mr. Gordon's mill.

Q. State to the jury what those threats were? A. He said to me one morning when he came to the mill, "Mr. Atkins I will tell you the way to decide between the blacks and the whites is to go into the old field and fight it out, and, by God! if my side gains the day I am going to take from the raddle up; then he turned into the mill and I did not see any more of him.

Q. Did you hear any more from him? A. No, sir.

Cross-Examination by Mr. Corbin.—Q. You say his was last February? A. Yes, sir; I think it was, just before he was killed.

Q. How long before he was killed? A. I think a week or ten days.

Q. That was the way he intended to settle the difference between the white and colored people? A. Yes, sir.

Q. What did you understand by it? A. I understood that he wanted to have some fuss.

Q. Did you know the Ku Klux had been raiding around a long time before that? A. I heard they had.

Q. Was it not that fuss he referred to? A. He didn't mention the Ku Klux.

Q. Did you understand him as referring to the Ku Klux? A. No, sir.

Q. With whom then was the fuss? A. To that he did not say.

Q. Did he threaten anybody living around there? A. No, he didn't.

Q. Was there not some disturbance up there in the month? A. No, sir.

Q. Are you a member of the Ku Klux organization? A. No, sir, I am not.

Q. Do you know anybody who is? A. No, sir, I do not.

Q. Do you know this defendant, Robert Hays Mitchell? A. No, sir.

Q. Did you never see him before? A. Not as I mind it.

Q. Did you never hear of him? Question objected to and withdrawn.

Q. What do you know about the Ku Klux raiding about the county? A. I heard that they were about.

Q. When did you first hear that they were about? A. I first heard about it last Christmas, before December.

Q. What did you hear they were doing? A. I did not hear what they were doing.

Q. Did you hear they were out nights whipping colored people? A. I didn't hear of their doing that.

Q. You say you did not hear that? A. No, sir, I did not.

Q. What did you hear? A. I heard that the Ku Klux were raiding around.

Q. On whom were they raiding? A. They didn't say whom.

Q. You say you did not know what was meant by raiding around at night? A. I didn't.

Q. Did they visit you? A. No, sir.

Q. Do you not know that the colored people were very much frightened? A. No, sir; I don't.

Q. Did you know the colored people lay out night after night, and month after month for fear of them? A. No, sir; I never heard of any of them lying out.

Q. Did any of them work for you or with you? A. No, sir.

Q. Then you don't know much about the fear among the colored people; answer that? A. No, sir.

Q. Were you afraid of Jim Williams and his company? A. I cannot say that I was.

Q. You don't think there was any occasion for being afraid of them? A. Well, I don't know.

Q. Did you think that Jim Williams was going to kill "from the cradle up?" A. I don't know.

Q. But he proposed to fight it out in the old field in a manly way, did he not? A. Yes, sir,

C. J. FRYE,

A witness for the defense, being duly sworn, testified as follows:

Examined-in-Chief by M. S. Stribery.—Q. Where do you live? A. In Rock Hill, York county.

Q. Do you know Mr. Gunthrop? A. I do not.

Q. Do you know anything about the organization of 1868? A. I belonged to the organization called—

Q. What was the organization called? A. Some called it the Council of Safety; others called it the Ku Klux.

Q. Had it the same constitution that this organization had? A. In this organization, there is something about death! death!! death!!! That is not the oath I took. I didn't take any such oath as that.

Q. You say you joined that organization in 1868? A. Yes, sir.

Q. Was there any other organization in that part of the country? A. No, sir; not with white people—of colored people; Loyal Leagues and the like.

Q. The only organization you knew of was the one you belonged to? A. Yes, sir.

Q. What was the object of that organization? A. It was self-protection, in case there was any outbreak in the country.

Q. Had you a constitution and articles? A. I really don't know whether there was or not. I went up and joined at Moore's Hill, about two o'clock in the day time—in open day light. I was told if there was any outbreak in the country, I was to be called up to go to it.

Q. Did you tell any one of this? A. I told Colonel Merrill.

Q. What did you tell him? A. I told him I had joined that organization, and I told him that I was at another meeting at the yard, which he asked me about, and the proposition was made to take arms from the negroes—old shot guns—because they might do some damage with them. The organization was broken up.

Q. Had that organization anything to do with the voting franchise? A. I never heard anything of that kind, sir.

Q. Are you a Trial Justice? A. I am sir, under Gov. Scott.

Q. When were you appointed? A. About the 15th day of last February.

Cross Examination by Mr. Corbin.—Q. Will you please listen to this obligation?

[Mr. Corbin read the constitution and by-laws of the Ku Klux, taken from Mr. Sam Brown.]

Q. Is that the same obligation that you had? A. I am not able to say; I am not able to say that that is the one, but I don't remember, death! death!! death!!!

Q. Do you remember that the object was to oppose the principles of the Radical party? A. I cannot say it was that, for I have been a square out Republican all my life.

Q. Can you name anybody that belonged to it. Who was the chief? A. I don't recollect; I think Mr. Tyler Jones officiated when I joined.

Q. Who else was there? A. I think I went in with about twenty-five, but I don't recollect who they were.

Q. Do you know if that organization paraded one night after dark? A. Col. Merrill told me so, I do not know it of myself.

Q. Do you know whether this organization to which you belonged, ever went on a raid upon anybody? A. Not that I know anything about, or that I ever heard.

Q. Have you heard from members of the organization that it did? A. No, sir; I heard something from members. One member told me that he had told Major Merrill. Mr. Rattery told me that he had told Major Merrill about it, that he had raided on the Ferris's.

Q. What did they raid on Ferris for? A. I don't know; I was not there.

Q. Who is Mr. Ferris? A. He is a very clever gentleman, and lives above Rock Hill.

Q. Is he a Republican or Democrat? A. I don't think he takes any part in the Republican ticket.

Q. Don't you know he voted the Republican ticket? A. I do not.

Q. Do you know what they went there for? A. I do not; I only know that Mr. Rattery told me, that he had told Major Merrill, that he had been in that raid.

Q. Didn't they go there for a negro? A. I do not know.

Q. Didn't Rattery tell you that he was wounded in that raid? A. Yes, sir.

Q. Where? A. He had a little wound on the face.

Q. What by? A. I don't know.

Q. Did he not tell you he was shot? A. He told me that he had got a wound, and that he had told Major Merrill about it.

Q. You say that you do not know anything about the organization since that time. A. I do not; I have not met with him since.

Q. You say you never heard the constitution and by-laws read? A. No, sir; and never joined them.

Q. Haven't you talked with Mr. Iredeil Jones about being in that organization? Yes, sir; frequently.

Q. Who was chief at that time? A. I do not know.

Q. He presided at the meeting you attended, did he not? A. Yes, sir.

Q. Was not this organization just previous to the election? A. I joined it in July, 1868, and that was the only time I was in it.

Q. Have you any knowledge at all what its political purpose was? A. I really didn't understand that there was any political purpose in it.

Q. Did you not understand that it was an organization in aid of the Democratic party? A. Well, sir; I certainly did not, and never understood that it was intended to intimidate any man at the election.

Q. Have you not understood since that it was so? A. I have heard so.

Testimony objected to.

Q. By Mr. Johnson. Were you ever arrested? A. I never was by force of arms; I had been requested to appear at Colonel Merrill's office, which I did.

Q. You were not kept by Major Merrill after the explanation? A. No, sir.

Q. By Mr. Corbin. You were not arrested, were you? A. No, sir. I had a very pleasant interview with him for two or three hours; then left on my own business.

The defense rested.

#### TESTIMONY OF ANDY TIMMS.

Andy Timms, a witness for the prosecution, called in rebuttal, testified as follows:

By Mr. Corbin.—Q. Do you know about a meeting called by white and colored people down in that neighborhood in reference to those guns? A. Yes, sir.

Q. State what the object of it was, and who were present? A. Mr. Moore and Mr. Robert Moore and Mr. Crawford, and I was there myself, and there were many colored men; the object of the meeting was to call upon the whites, to call upon the Democratic party, to know whether the guns were a bone of contention in that section.

Q. When was the meeting held? A. It was held on the 9th or 10th of February last.

Q. What took place at that meeting? A. The result of that meeting was that, as far as the guns was the cause of the excitement, they said it was not so. Crawford said that he was afraid the guns would get into the hands of foolish young men, who would go shooting in the woods. Crawford asked Jim Williams if he was willing to give up the guns, and Mr. Russell also asked if he was willing to give up the guns. Said he: "I will take charge of them, if you give them up." Said he: "We can see that Jim Williams is not willing to give up the guns until he is ordered to do so by Governor Scott."

Q. What did they say about being afraid? A. They said they were not afraid of the guns, except in the hands of foolish boys. That is what Captain Ed. Crawford said. He said he was not opposed to us settled men having them who knew how to shoot with them. Said he: "They are not fit for hunting guns; they would cut rabbits all to pieces."

Q. How did that meeting happen to be called? A. They had taken to calling in the Yorkville guns. We went to Yorkville, Mr. Bratton and Jim Williams, to consult with Russell, what he thought about the guns. In the country, Russell proposed to me to call in Mr. Smith and we would appoint to have a meeting, and call the most prominent citizens to see if we could have a settlement. I applied to Maj. Hart to write the letter, [pointing to Maj. Hart,] he wrote the letter to ask the gentlemen to meet us.

Q. What took place at that meeting? A. Well, sir, it was pleasant and agreeable.

Q. Was there any contention or quarrelling at a great deal of trouble to get there? A. Jim Williams

said he was willing to give up the guns if he got an order from Governor Scott.

Q. Now tell us about that Mr. Mendinball interfering with Jim Williams' company on drill and being arrested? A. I was not present at that time; Williams and Bratton were present.

Q. Were you intimate with Jim Williams? A. Yes, sir.

Q. Did you ever hear him make any threats? A. I did not, sir.

Q. Did you ever hear of his making any threats? A. I did the third night, when they made a raid on the Scott guns.

Q. Did you ever hear of it before he was killed? A. I did, sir.

Q. Who did you hear it from after? A. I heard it from Edward Crawford; said Jim said he would kill from the cradle up; said he "I reckon he is now killing from the cradle up," said he, "I suppose you have heard that," said I, no I never heard it till I heard you say so.

Q. What class of persons reported these things about Jim Williams after he was dead? I heard it from white people and some few Democratic niggers.

Q. Do you know whether the colored people were laying out then to keep away from the Ku Klux? A. Some of them were watching and laying out before Williams was killed, but not many; but it came that every man had to lie out.

Q. How long was it that every man had to lie out? A. It was some five or six weeks that they lay out, some in the thickets and the woods and all about.

Q. What was that for? A. For fear they would be killed by the Ku Klux Klan.

Q. What stopped their lying out? A. There were meetings held in Yorkville, where they made the first compromise.

Q. When was the first Ku Klux raid in York County? A. I cannot say exactly; it was in the fall, that I first heard of it. It was after the election.

Q. How soon after? A. I don't remember exactly.

Q. Was it sometime before Christmas? A. Yes, sir.

Q. When were the fires that were generally reported; when did they take place? A. It was after Christmas, except Dr. Allison's burning; I don't remember exactly when that was.

Q. Then all the rest were after Christmas? A. I think they were sir.

Q. Did Dr. Allison tell you about the burning of the house? A. Yes, sir; he said he didn't believe it was burned by the colored people, from the tracks.

Q. What did he say about the tracks? A. He said it was a No. 5 or 6 boot or shoe track, and that was too fine and neat a track for a colored man to wear.

Q. Do you know what Jim Williams' general reputation on for truth and veracity was, and as to being a quiet, peaceable citizen? A. I never heard of him stealing or being in any way a quarrelsome man.

Q. What was his reputation? was it good or bad? A. It was good, as far as I knew.

Q. Did you ever hear anything against him till after he was killed? A. Till after he was killed? That I never did sir.

Cross-Examination by Mr. Stanbery.—Q. When you went to Yorkville about the arms, what reason had you for going? A. We understood the Yorkville guns were called in, and we went to see about it. Williams and Allen and Bratton went with me to inquire about that.

Q. Who did you meet? A. We met a great many persons on that business. Russell and Sam Smith and Jim Williams and I agreed, with others, to set a day and invite both parties to this meeting. This was in General Anderson's office.

Q. Who is this Mr. Russell? A. Dave Russell; he lives at Yorkville.

Q. Who is this General Anderson that you spoke of? A. General Anderson who was sent up by Governor Scott.

Q. Did you understand that Governor Scott had sent General Anderson to receive the guns? A. The Yorkville guns were called in while we were there.

Q. Was he authorized to receive the guns? A. Not to my understanding.

Q. What did Russell tell you? A. Russell didn't tell me that Anderson said so; he showed no authority, and we did not propose to give up the guns; I said if the guns were the bone of contention I felt disposed to think it would be better to give them up; but when we held the meeting we didn't find that the guns were the bone of contention.

Q. When Russell asked Rainey to give up the guns that did Rainey reply to it? A. That he would not give them up unless he had orders from Governor Scott.

Q. Did he reply in that way or did he curse Russell? A. I do not think he did curse him.

Q. Did he not use profane language? A. He was not profane man, and I had not heard him curse for over a year, not an oath.

#### TESTIMONY OF MR. F. J. O'CONNELL.

Mr. O'Connell, a witness for the prosecution in rebuttal, being duly sworn, testified as follows:

Q. Did you know Jim Williams, sometimes called Jim Rainey? A. Yes, sir.

Q. What was his general reputation for truth, and being a quiet and peaceable citizen? A. As far as I knew, I think he was a truthful man; he was one of the quietest and most peaceable men that I knew in York County.

Q. How long have you known him? A. I cannot really say; it was sometime before the last election, and during that time I always found him a genuine, jovial and good hearted fellow; he was a peaceable man, and not disposed to disturb anybody.

Q. Did you ever hear of his making threats of killing people from the cradle up? A. No, sir, I never heard him make any threats of that kind; I have spoken to him in regard to threats of that description, and always found him to be opposed to anything of that kind.

Q. Did you hear these reports of him making threats after he was hung? A. I did hear reports to that effect.

Q. From who did you hear reports of these threats? A. I might mention the names of many; but I don't think anybody told me who was intimately acquainted with Williams. I heard he had made threats, but it was after he was killed; they were made by persons who were, I thought, opposed to Williams.

Q. Did you have any conversation with Jim Williams previous to his death in reference to Ku Klux outrages? A. We did talk in reference to that, but more in regard to the feelings abroad generally; and he was opposed to outrages or anything of that kind. He was altogether opposed to it.

Q. Were the raidings going on at that time? A. I could not say; there was some disposition to violence in York county at that time.

Q. When did the Ku Klux outrages commence in York county? A. It was last winter, as far as I can remember.

Q. About what time did they commence? A. About January last.

Q. Did you hear of any raid before that? A. I believe I did hear of their raiding before that.

Q. When did the fires that have been complained of occur; was it before or after the raiding? A. It was after the raiding.

Q. Are you sure about that? A. Yes, sir; that is my impression.

Q. Do you know anything about the burnings and who committed them? A. No, sir; I do not.

Q. Who was understood as doing the raiding upon the negroes at that time in York county? A. They were called Ku Klux.

Q. State whether a reign of terror existed among the colored people?

Question objected to.

Mr. Hart. Ask the witness whether or not he was there.

Q. Were you there at the time? A. I was not in York county during the summer, but I left when the Legislature met here.

Q. Were you there at the fall election? A. Yes, sir.

Q. Did you return after the close of the Legislature? A. Not immediately afterwards.

Q. Why not? A. I had received letters that it would not be safe to return. I received a letter from my father that a raid was to be made upon my house.

Q. Did you go back, and if not, why? A. I didn't go back, because I thought I was going to be killed if I did.

Q. By whom? A. By Ku Klux.

Q. Are you a Republican? A. Yes, sir.

Q. Why did you expect that they were going to kill you? A. On account of my Republican principles. Nothing else that I know of.

Q. Can you go back there now safely? A. Yes, sir.

Q. How long since? A. Ever since Major Merrill has got the Ku Klux into order.

Cross Examined by Mr. Johnson.—Q. How came you to talk to Williams about threats of violence? A. I heard of threats of violence before the conversation.

Q. What threats were they? A. They were threats of a violent character, and threats to the members of the Republican party.

Q. Did you hear of threats from Jim Williams? A. Jim Williams said he was opposed to anything like retaliation. He understood there was an organization in York county that was gotten up for the purpose of committing outrages upon members of the Republican party, and that these outrages were to be deplored; but certainly that he was opposed to anything like retaliating upon those parties.

Q. Did you apprehend at that time that there might be violence on the part of Jim Williams and other colored people? A. No, sir. Not from Jim Williams.

Q. Did you hear that houses were to be burned? A. No, sir.

Q. At any time? A. No, sir, not in York county; I didn't hear from any colored man that there were any houses to be burned.

Q. Did you hear that there were any houses to be burned? A. Some members of the Democratic party told me that colored people were combined to burn their houses and gin-houses.

Q. Were not a great many houses and barns burned? A. I heard reports to that effect, but I do not know of my own knowledge.

Q. Did you hear of gin-houses or barns of any Republican citizens being burned? A. No, sir.

Q. As far as you heard about the burning it was confined to Democratic owners? A. I heard about burnings, but I don't know anything about them.

Q. Do you know if there was any alarm in the neighborhood on the part of white men? A. They pretended to be alarmed; but I don't believe that there was any actual alarm about it.

Q. You say you had heard they were alarmed but you don't believe it? A. I didn't say I heard that they were alarmed; I had conversation with them, and they made pretense of being alarmed, but I didn't believe it.

Q. How do you know it was a pretense? A. For this reason, that I did not believe that there was any white men in our county who were scared about the colored militia.

Q. You think there was nobody scared then? A. I do not, sir.

Q. Do you live in York county? A. Yes, sir.

Q. How far from Yorkville? A. Twenty-one miles.

Q. How far from the house of Jim Williams? A. I could not say, he lives at McConnellsville; I do not know the distance.

Q. Do you know where he lives? A. I do not know exactly.

Q. How long have you lived in that neighborhood? A. I went up there to live in 1885.

Q. I understand you to say that although you were told by some white men that they had fears about the burning of their houses—that you now tell the jury that you didn't believe it—that it was a mere pretense. A. When you asked me the question, I understood you to ask if there were any fears in York county. In regard to outrages, I don't think there were any fears of that kind existing.

Q. Please answer my question. I understand you now to say that you were told by white men that they had fears that their houses would be burned, but that you didn't think they had any fears—that the whole story was a pretext? A. I don't remember having said that, but I can say it now.

Q. Did you not say it three minutes ago? A. I don't know whether I did or not, but I can say it now.

Q. Did you not say that you believed the reports which you heard from white men—that their apprehended fear was a pretext—and they

had no fears. Was not that your testimony? A. Their fears in regard to the militia were a pretext—that is what I meant to say.

Q. What did you say as to their fears about burning their houses? A. I expect that there might have been fears about their burning their houses.

Q. I thought you said they had told you they had fears about burning their houses? A. I never had any conversation with them about burning their houses.

Q. Had you any conversation about burning their houses? A. I may have heard something in regard to these burnings.

Q. Did they express any apprehension at that time consequent upon those burnings? A. I believe they did, but those apprehensions were all visionary.

Q. Did you not tell the jury just now in your opinion, that they really did not entertain any such apprehension? A. What I said was in regard to the militia.

Q. Now you tell the jury that when they told you that they feared the militia, you believe that was all pretext, and that they did not apprehend any danger? A. Yes, sir.

Q. Do you belong to any militia company? A. No, sir.

Q. Did you never belong to one? A. I was a colonel of militia, but I resigned.

Q. Had you any military command? A. I was colonel of a regiment of militia at one time, but I resigned.

Q. When was that? A. It was previous to the last election.

Q. Do you mean the election of October, 1871? A. The last State election.

Q. What companies composed your regiment? A. I never took the trouble to find out.

A. Was Captain Williams' company one of your regiment? A. It is my impression that it was.

Q. Have you any impression in relation to any other company belonging to your regiment? A. There was one company at Yorkville belonging to my regiment.

Q. How many more? A. I could not tell.

Q. Did you ever call them out? A. No, sir; never.

Q. When did you resign? A. Immediately arms were sent up to Yorkville.

Q. You commanded them as Colonel when they were without arms? A. Yes, sir.

Q. What did you resign for? A. Because I didn't like the position; I thought it was too much honor without any pay.

Q. Mr. Corbin. When did you come down to the Legislature? A. Generally about when the Legislature was called.

Q. How long was it in session? A. Until March.

#### TESTIMONY OF J. H. WHITE.

J. H. White, a witness for the prosecution, in rebuttal being duly sworn, testified as follows.

Q. By Mr. Corbin. Are you a member of the House of Representatives? A. Yes, sir.

Q. How long have you been a member? A. Ever since the reconstruction in 1868.

Q. Were you re-elected last fall? A. Yes, sir; from York county.

Q. How long have you lived there; have you been a voter since the war; did you know Jim Williams? A. Yes, sir; I knew him very well and the people among whom he lived.

Q. What was his character as a peaceable, quiet citizen? A. It was always good.

Q. Do you know anything about his making threats; did you hear of his threatening to kill people from the cradle up? A. I never heard of it but since he was murdered.

Q. From whom did you hear it after he was murdered? A. I don't remember; it was generally talked of in the country among the white people.

Q. From your knowledge of Williams, do you believe in such stories?

Question objected to and withdrawn.

Q. Do you know anything about raiding by the Ku Klux? A. Yes, sir.

Q. When did it commence? A. The first raid that I heard of was about at the time of the Presidential election; the very night before.

Q. What raid was that? A. It was somewhere near Wylie's Store.

Q. Who did they raid upon? A. There were half a dozen came into my house and told me of the circumstance; I told them we would go up to Mr. Rose's, who was the trial justice; some parties were arrested there; I think most probably one of the Leecher's were arrested on the charge.

Q. What was the next raid? I think the next raid of any consequence was the one upon Tom Humphrey.

Q. When did that occur? A. Sometime last December.

Q. Did you know Tom Humphrey? A. Very well, sir.

Q. What was his politics? A. Republican or Radical as they call them.

Q. Did you know anything about the raid on Reubin Black about that time? A. I do not remember exactly when it occurred, but I do know when he came to York to report it.

Q. When was that? A. The year before last; I was in court at the investigation; when the matter was turned over to the authorities.

Q. Was that a raid by the Ku Klux? A. It was said to be by the Ku Klux.

Q. Was it done in the night? Yes, sir.

Q. Did you hear anything about the raid on Bill Wright? A. Yes, sir; that was the same year.

Q. Was it a Ku Klux raid in the night? A. Yes, sir; it was said so.

Q. What was the next raid made by the K. K.? A. Some time directly after January, this year.

Q. State whether they were general in the county last December? A. Yes, sir; they were about that time; there was a great deal of terror amongst the colored people about that time; I know it from the fact that the colored people thought that it would be best to declare martial law, and I know I opposed it, for, if we did that, we should have the Ku Klux organization fired; I thought we had better call upon the United States for aid.

Q. Do you know anything about burning school houses? A. I heard that a great many school houses were burned.

Question objected to.

The Court. You have had a good deal of testimony about fires.

Mr. Johnson. We have not offered any evidence as to the burning of schools.

Mr. Chamberlain. An attempt has been made to confine these burnings to gin houses and barns; we want to show that colored school houses were burned as well.

Q. Tell us if any school houses were burned, and how many of them? A. I don't remember how many, but it was generally said that the K. K. burned them; that was common report.

Q. What reports did you hear? A. That one school house was burned down in the Bethel settlement, and another in the western portion of the county, that I know of.

Q. Do you know anything about the Green Pond school? A. Yes, sir; that was the one I spoke of; that, I believe, was burned down three times.

Q. Whoby? A. By unknown parties.

Q. Who was supposed to have done it?

Question objected to.

A. That was the general supposition, that it was the Ku Klux.

Mr. Johnson. We object to all that evidence.

Mr. Corbin. We admit if the court please that it would not be proper evidence if the other side had not introduced the same kind.

Q When were the first fires? A The first fires was in 1868; on the night of the Presidential election a man's house was burnt down; he said that he was told if he went to the election that he would be killed.

Mr. Johnson. What sort of testimony is that?

Witness. The man came to me.

Mr. Stanbery. Will the Court allow that to go in; it was said by some man, as to what somebody else told him.

The Court. It is not evidence.

Mr. Corbin. We don't care anything about it.

Mr. Stanbery. We are tired of objecting.

The Court. You are not more tired than the Court is, Mr. Stanbery, by the loose way of examination, but I don't think it is the part of the defense to complain.

Q Do you know anything about Ellison's gin-house being burnt? A Yes, sir, heard of it.

Q When was that burnt? A Last year.

Q What time? A Sometime in the Fall.

Q Did Dr. Ellison tell you anything about who he believed burnt it? A Dr. Ellison told me that he believed it was white men burnt it, sir.

Q Why did he think so?

The Court. It don't make any difference why.

A The reason why —

The Court. Hold on.

Q Now, when was the next burning? A It was during the session of the Legislature. I don't exactly remember.

Q After Christmas? A Yes, sir.

Q New Year's? Yes, sir.

Q Was it before or after the raiding by the Ku Klux? A The burning was done after the raiding—the killing and whipping—the killing of Tom Roundtree, and whipping a number of persons in Clay Hill and along the western portion of the county.

Q What means did the colored people generally take to protect themselves from the Ku Klux raiding? A They generally lay out.

Q What do you mean by that? They took to the woods for it.

Q When? A Of nights, sir.

Q How long did they stay there? A Well, a number of them did lay out all winter, sir.

Q Do you mean to say that the colored people, at dark, went out to the woods and lay down and slept there all night? A Yes, sir, they did. Many of them built up brush tents in the woods to protect themselves from these raids.

Q Were the school houses burned last winter, or this summer, or when? A About the burning, I don't think there were any burnt in the summer, but they were torn down.

Cross examination waived.

#### TESTIMONY OF GEORGE WITHERSPOON.

George Witherspoon, called as a witness for the prosecution, in rebuttal, being duly sworn, testified as follows:

*Direct Examination by Mr. Corbin.*—Q Where do you live? A Yorkville.

Q How long have you lived there? A About twenty-eight or twenty-nine years.

Q Voter there? A Yes, sir.

Q Do you know Jim Williams? A Yes, sir.

Q Know the people among whom he lived? A Yes, sir.

Q Were you in his company? A No, sir.

Q What was his reputation as a peaceable, quiet

individual? A I knew nothing else of him, but a peaceable, quiet man.

Q Was that his reputation among his people? A Yes, sir.

Q You knew him intimately. A Yes, sir.

Q Did you ever hear him make any threats against the white people? A Never did, sir.

Q Did you hear of them? A I heard of them after his death.

Q Ever hear of them before his death? A Never heard of it before, sir.

Q From whom did you hear them after he was dead? A From Dr. Bratton—Dr. Rufus Bratton.

Q Who is he? A He is a physician there in York, sir.

Q Do you know where he is now? A No, sir; I do not.

The Court. That is not rebutting testimony.

Mr. Corbin. I want to know, for, perhaps, I might call him.

*Cross Examination by Mr. Stanbery.*—Q As to Williams; what qualities had he that induced those persons of color out there, to make him captain of the company; what qualifications had he?

Mr. Corbin. I don't see the materiality of that.

The Court. Did they make him—

Mr. Stanbery. Yes, sir; he was elected.

The Witness. That I cannot say, whether they made him or whether he was appointed.

Q Had he such qualifications as would fit him for that position? A I suppose so.

Q Was he a man likely to do what he said? A I don't know sir, I always known him as a quiet and truthful man.

Q Did you find him to be a man that was as good as his word? A I never found him any other way, sir.

#### TESTIMONY OF LEWIS HOWSER.

Lewis Howser was called as a witness for the prosecution in rebuttal, he was duly sworn and testified as follows:

Q Where do you live? A I lived in York county the last ten years, but I have been from my wife ten months; I have been down here.

Q How long did you live there before? A I lived there ever since the year 1865.

Q When did you come down here? A Came down here about the 17th of March.

Q Why? A The Ku Klux run me off, sir.

Mr. Johnson. Is that rebutting?

Mr. Corbin. No, I don't know that he was going to say that.

Q Did you know Jim Williams? A I did, sir.

Q How long have you known him? A Since the year 1865.

Q Do you know the people among whom he lived? A Yes, sir.

Q Do you know what his reputation was as a quiet citizen? A Yes, sir.

Q What was it? A Well, sir, he was a colored man; he was an upright gentleman in every respect, so far as I knew of him.

Q Was he a man that would make trouble? A No, sir; he was not.

Q You knew him intimately? A I did, sir.

Q Did you belong to his company? A I did, sir.

Q Did you muster with his company? A I did, sir.

Q Drill? Yes, sir.

Q Did you ever hear him make any threats against the white people? A I did not, sir, white nor colored.

Q Do you know whether he instructed his com-

pany that they were to kill from the cradle up? A No, sir, I did not; never heard anything of the kind.

Q Have you heard it any time? A No, sir, I have not.

Q Since he was killed, have you heard that he was going to kill from the cradle up? A Yes, sir; sometime since he was killed.

Q Never before? A Never before, sir.

Q Whom have you heard it from since he was killed? A From citizens that lived in Yorkville before I came away.

Q White or colored? A The lady that I lived with.

Q Who? A Mary Williamson.

Q A white lady of Yorkville? A Yes, sir.

Q When did you commence to lay out? A I commenced to lay out after Jim Williams was killed, sir.

Q Were the colored people frightened there and lie out at the same time? A They was, sir.

Q Did they commence to lie out at the same time? A They did, sir.

*Cross Examination by Mr. Johnson.*—Q You say you were a member of the company? A I was, sir.

Q When did you last muster? A Last mustered about three weeks before last Christmas, sir—a year ago.

Q Were you present at a muster a few days before Williams was hung? No, sir, I was not.

Q Didn't you know there was a muster of his troop? No; I don't remember.

Q Did you attend all the musters? A I did when I was well; but when I was sick I did not.

Q Were you sick in February or March last? A I was with some chills, sir; I was not fit for any duty towards mustering.

Q Then you don't know, in point of fact, that his company was mustered in February before he was killed? A No; I do not.

Q Do you know anything about his refusing to give up his arms? A I do; I was at the Cross Roads; a meeting was called to meet there, between Yorkville and where I live, on a Saturday morning; there was two men from Yorkville that he said wanted him to give his arms up; I went there to meet him.

Q Were they given up? A Of course they gave them; they was not given up that day, but they gave them up since.

Q Were they given up then? No, sir; they was not.

Q Why not? A Well, Jim Williams wouldn't consent to give them up.

Q How long was that before the poor fellow was hung? A To the best of my knowledge, I suppose, sir, more than about two weeks, as well as I can remember.

Q You were then well enough to be present at that meeting? A I was.

Q How far was the meeting from Yorkville? A I suppose about nine miles, sir.

Q But you cannot say whether you were well enough to attend a muster if there was one that met on the Friday before he was hung? A No, sir; I don't remember anything about his having a muster on Friday; I am speaking of that what I remember; what I don't remember, I won't speak of.

Q But you were present when the guns were refused to be given up? A I was present when he was called on to give up his guns.

*Re-direct Examination.*—Q Did you hear Williams give any reason why he wouldn't give up the guns? A I did sir; he told them that they hadn't

given him any arms; and he didn't know how to give his arms to them.

Q Whom did he tell this to? A Mr. Edward Crawford, Mr. Joe. Moore, and Jim Pursue and David Russel from Yorkville; I was present and heard it all.

Q Did you have any notice to muster the Friday before Jim Williams was killed? A I did not sir.

Q Did you hear of any thing of the kind? A I never heard of any thing of the kind.

Q You lived very near Jim Williams? A Within a mile of him; sir.

Q If there had been a muster you would have known it wouldn't you?

Mr. Johnson. That won't do; that is for the jury.

What do you say?

The Court. No, that won't do.

#### TESTIMONY OF ALLEN WHITE.

Allen White was next called for the prosecution in rebuttal; he was duly sworn and testified as follows:

Q Where do you live? A In Yorkville.

Q How long have you lived there? A All my life.

Q A voter there? A Yes, sir.

Q Republican? A Yes, sir.

Q Did you know Jim Williams? Yes, sir.

Q Do you know the people among whom he lived? A No, sir; I did not; when he lived in York I knew Mr. Rafney, whom he belonged to.

Q How long have you known Jim Williams? A About seventeen years.

Q Do you know what his character was as a quiet, peaceable citizen? A As far as ever I knew of him, he was, sir.

Q Did he have such a reputation as that? A I never heard anything else.

Q Did you ever hear any threats that he had made against the white people? A Never, until I heard of them here in the court house, sir.

*Cross Examination by Mr. Johnson.*—Q How far do you live from where he lived? A Where I live; I live about ten miles now—not then—he used to live in York.

Q What is the nearest that you have lived from Jim Williams' house? A Now?

Q No; at any time? A Well, I used to live when he lived in York, about a quarter of a mile, but now it is about where he lived, from York now, about ten miles.

Q How long have you lived where you now live? A Well I am living about eighty miles now of where I used to live.

Q I thought you lived now in the same place? A No, sir; I am about eighty-five miles from home.

Q What do you mean by that; is your residence eighty-five miles from home? A I am at this time eighty-five miles from home, now.

Mr. Johnson. I am a good deal more; where is your home? A In Yorkville.

Q How long have you lived at the home which you now have in York? A I have been living there about four years.

Q What is the distance of that home from where Williams lived? A About ten miles.

#### TESTIMONY OF ANDY TIMS.

Andy Tims was re-called for the prosecution, in rebuttal, and testified as follows:

*Direct Examination by Mr. Corbin.*—Q When did your company muster last? A Three weeks before Christmas, sir.

Q That the last regular muster of it? A That was the last time they was called together.



*Cross Examination by Mr. Johnson.*—Q Don't you know some of them mustered the Friday before Williams was killed? A No, sir; they did not.

Q You sure of that? A I know that.

Q How? A Because I was company clerk; they didn't go without my orders.

Q Now, I understand you have stated positively to the jury that the last muster of the company, or any members of the company, was, when? A Three weeks before Christmas; that was the last muster that was held; some of the boys met, yes, sir, at the muster ground, but there was no muster order.

Q Did they meet afterwards? A There was no more meeting after that.

Q Did any of the boys meet there? A No, sir, not that I heard or know, and I was right close to the muster ground.

Mr. Corbin. I think we close here; of course, except as to this point, the defense has still left open as to the character of the organization in 1868.

Mr. Johnson. The witness we expected is not here, and we will not ask the Court to wait; we have finished.

Mr. Corbin. If the Court please, it is suggested by my associate, and in that suggestion I concur, that the vast mass of testimony which has been adduced in this case, would seem to require some little examination and arrangement before we go into the argument, and we would request the Court to adjourn until ten o'clock to-morrow morning.

Ten o'clock, it was thought by the Court, might interfere with the meeting of the grand jury, and therefore Court was adjourned until eleven, Saturday morning, December 16, 1871.

## FIFTEENTH DAY'S PROCEEDINGS, DECEMBER 16.

The court met pursuant to adjournment, Hon. H. L. Bond presiding; Hon. G. S. Bryan, Associate Judge.

The testimony in the case of United States vs. Robert Hayes Mitchell being all before the court the case was submitted to argument.

### ARGUMENT OF HON. D. H. CHAMBERLAIN.

Hon. D. H. Chamberlain spoke as follows: May it please your honors and gentlemen of the jury, you are now approaching the close of a long trial. The issue between the United States and this prisoner is now to be submitted to you upon the law and upon the evidences as developed in this trial. You cannot, gentlemen of the jury, be unaware that this case, in all its features, is a most remarkable and interesting one. You cannot be unaware that not only the community in this State is interested in this trial, but that the entire country is watching with unusual interest and anxiety for the issue of this inquiry. You know, gentlemen of the jury, that not only your individual interests, your safety, your protection, your security as citizens is involved in this trial, but you know, before I remind you, that broader interests than yours or those of this defendant, are to be determined by your verdict.

I do not feel, gentlemen of the jury, as I have sometimes felt in commencing this argument, and, in urging upon you a verdict of guilty against this defendant, that I am pressing for the life or the liberty of a man whose interests and whose defense has not been committed to competent and capable hands, I

can have no fears, gentlemen of the jury, in this trial that everything that can make for the defendant, will not only be presented to you, but that it will go to you commended with all the learning, and forced upon you with all the eloquence that the bar of the United States can boast.

I shall not, therefore, feel that I can possibly exceed the measure of my duty to the Government of the United States if I present to you in all its enormity, and in all its details, and with whatever of force I can command, all the circumstances and considerations which point to the guilt of this prisoner, and gentlemen of the jury, not only that, but I am urged to a more than usual effort to discharge my full duty by the consciousness of what I have already urged upon you, that this trial and its results, stretches far beyond this defendant, and far beyond this court room, and touches the vital interests of every citizen, and goes down to the very foundations of our American liberty and government.

Now gentlemen of the jury, and if it please your honors, I believe that there are no contested legal points about which it is proper that I should address myself to the court, at this time I am not aware that there is any contest between the counsel for the defense and ourselves, as to the nature and definitions of the conspiracy, or what it is necessary for the government to prove, in order to maintain this indictment; and I shall therefore proceed to lay this case before you, as set forth in the indictment and the evidence which has been prosecuted in support of it.

This indictment contains two counts against this defendant. The first charges him with conspiring with others to violate the provisions of the first section of the act of 1870, by hindering and preventing divers male citizens of African descent from voting at future elections, and names the elections to occur in October, 1872, at the time when this prevention and this intimidation was to take effect.

The second count charges him with conspiring with others to injure, oppress and intimidate Jim Williams because he had voted at a former election for a member of Congress, of the United States—that is the scope of this indictment.

And now, gentlemen of the jury, the first indictment charges a general conspiracy on the part of Robert Hayes Mitchell, and others, to deprive certain colored citizens, qualified to vote, of their right to vote at future elections. Let me tell you, gentlemen of the jury, before I proceed further, what a conspiracy is. A conspiracy is an agreement or combination between two or more persons, by their concerted action to do an unlawful act. You mark the definition, gentlemen of the jury. It is the agreement or combination to do the unlawful act. The unlawful act may never be done. No step may ever be taken to accomplish that unlawful purpose; but the essence of the offense; the crime is completed when the agreement and combination is formed to do the unlawful act. That is all that it would be necessary in this instance to prove; simply that Robert Hayes Mitchell, this defendant, did conspire, combine, or agree with other persons, to do an unlawful act by their united action.

Now, gentlemen of the jury, I beg you carry this definition through this examination and argument, that a conspiracy is not an act—an overt act—but that it is an agreement—an agreeing together with parties united to accomplish, by their unlawful action, an unlawful act or purpose.

And now, gentlemen of the jury, before I go another step, let me call your attention to another

important principle which must be carried in your mind throughout this examination to accomplish an unlawful purpose, as one individual. If there are twelve men, twelve individuals in the conspiracy when that conspiracy begins, they are, in the eye of the law, one man, they breathe one breath, they speak one voice, they wield one arm; and therefore it is, gentlemen of the jury, that the law says that the acts, the words, the declarations of one of these twelve individuals, while in the pursuit of their unlawful purpose is the act, the word, the declaration of all. What, therefore, gentlemen of the jury, any one of the conspirators, whom we shall convict with this transaction while they were on that raid, as it is called, said, or what one of them did, what any one of them declared to be the purpose of that conspiracy, is the declaration of Robert Haynes Mitchell and every one who joined with that conspiracy; and it binds him as much as if the words had come from his own lips or the acts from his own hands.

Now, gentlemen of the jury, in proving a conspiracy, there are two ways. We may prove a conspiracy directly, by bringing before you the written agreement—the conspiracy as recited and written out and agreed upon in terms and in words; or we may prove conspiracy indirectly, by proving the acts, and the words, and the declarations of those who were engaged in the conspiracy. We enter upon both methods of proof. We have to lay before you now the agreement written and expressed upon paper, and after that we have to lay before you the acts, the declaration, the things said and done by those who joined in this conspiracy.

The evidence, gentlemen of the jury, in this case has been long and circumstantial, and I shall do you the credit at the outset to assume that your recollection of this evidence is as perfect as my own, and I shall not except when I desire to call especial attention to some parts of this evidence, be in the least obliged to rehearse the testimony again to you. Our first method, therefore, of proving this conspiracy against this defendant is by asking your attention to the written agreement, to the terms and purposes of the conspiracy as they were written down and assented to by the conspirators, and as they were bound to by an oath, to be carried into effect by this defendant and his fellow conspirators. Now, gentlemen of the jury, I hold in my hand what the government says is the written agreement, the terms and the purposes of this unlawful combination in which defendant was engaged. What is this paper? What is the evidence that connects this paper with this defendant? You remember, gentleman of the jury, the first witness that the Government put upon the stand testified that this paper was found among the private papers of one Samuel G. Brown, a citizen of York county; you remember that Mr. Albertus Hope, the second witness, testified that in 1863, he expressed to Mr. James Avery—Major Avery, a desire to see the ground work, to use his own expression, of this order about which he had heard, and that Major Avery gave to him a paper in response to his request containing the "ground work" of the order, and he delivered that paper to Mr. Samuel G. Brown. He also testified that this paper, which I hold in my hand, and which has been presented to you, appeared to be in its general terms to be that which he received from Major Avery; and further, that the paper itself which he received from Major Avery and which he delivered to Mr. Brown, consisted of one sheet and a half sheet, as this paper does which I hold in my hand. Now, then, gentlemen of the jury, who was

Samuel G. Brown in his relation to this conspiracy? We have upon the testimony of "Mr. Gunn," that he recognized Mr. Brown as a member of the Klan, that he made the sign of the Klan and Mr. Brown responded to those signs; and that in a conversation with Wesley Smith, another member of the order, they discussed the affairs of the order and it was then in the presence of Mr. Gunn and Mr. Wesley Smith, that Mr. Brown made the declaration that he was a member of the order, and that his Klan—he claimed to be the chief—could kill and whip more niggers than any Klan in York county. Is that all of the evidence, gentlemen of the jury, to prove that Mr. Samuel G. Brown was a member of the Klan? No; Elias Ramsey meets him at Shaw Church, at a meeting of the Klan, when a new chief is elected. Andrew Kirkpatrick, and other members of the order meet Samuel G. Brown at Shaw Church; and both of them have been heard upon the stand to testify to the presence of Samuel G. Brown upon that occasion. Samuel G. Brown, therefore, by his own proven statements, and by the testimony of two of his fellow-members of the order, was a member of the order known as the Ku Klux Klan. This paper, moreover, gentlemen of the jury, in my hand, is taken from the private papers of a proved conspirator and member of the order. There is in addition to this, evidence which identifies this paper as the same that was given by Major Avery to Mr. Albertus Hope, and by Mr. Hope to Mr. Sam'l E. Brown, a member of the order.

What, then, gentlemen of the jury, is this paper? It purports to be the oath, the constitution and by-laws of the Ku Klux Klan of the State of South Carolina. By the evidence which we have presented it is shown to come from Major Avery, and who is he? Let us pause a moment to inquire. John Caldwell, who acknowledges himself to be a member of the order, states that Major Avery was the chief of the Klan for York county, and he does not state this upon hearsay or report, but he tells you that he was present at the meeting at a store in the town of Yorkville, where Major Avery was elected chief of the county. This paper, therefore, gentlemen of the jury, comes from the chief of the order of York county. It comes to Mr. Albertus Hope, who acknowledged himself to be a member of the order; it goes from him to Mr. Samuel G. Brown, proved to be a member of the order; and from Samuel G. Brown it comes to you to-day. What does it purport to be?

It declares itself to be the oath, constitution and by-laws of the Ku Klux Klan of South Carolina. This sheet and a half, gentlemen of the jury, is the ground work of the order for York county; from Major Avery to Albertus Hope, and from Albertus Hope to Samuel G. Brown; all members of the order, and now it comes to you. Therefore, I say to you, gentlemen of the jury, that you stand face to face, with the written agreement, with the detailed conspiracy, with which we propose to connect this defendant. Now let us examine it and see if it purports to be the constitution and by-laws of the Ku Klux Klan. Let us see whether it is an innocent agreement, such as good citizens who look to the peace and welfare of the country might well be engaged in, or whether it is not, upon its face, an agreement that seems to put to the blush, every claim of the age to advancing civilization. Let us see whether it is not an agreement that ought to make us fear whether we have advanced yet beyond the age, when might was right, and nothing but power prevented the destruction of every liberty.

What is this paper; and what are its purposes; and how this Ku Klux Klan is to move on in its op-

erations? Why gentlemen of the jury, the first provision of the constitution, to which I desire to call your attention is that article 51, section 1, requires that every member of this order is to provide himself with a pistol, and Ku Klux gown and a signal instrument. Note that, gentlemen of the jury, this conspiracy or this agreement, is to be carried out in the first place, by arming every member with a pistol, and by disguising him in a Ku Klux gown, and providing him with a signal instrument. Armed, disguised and with a signal instrument, which shall make it unnecessary to use the human voice, is the first feature of this agreement. Now what is the next significant agreement? That any person who shall divulge, or cause to be divulged, any of the doings or purposes of this organization shall suffer death. Is that an innocent agreement gentlemen? Every member armed with a pistol, disguised in a gown, with his signal instrument, and if he makes known any of the affairs of this order, he shall die! Does that look like innocence? I read further: "We oppose and reject." What? False principles and government? unconstitutional laws? assaults upon our citizens? "We oppose and reject the principles." What, bad political principles? There may be, and perhaps are, bad men in all parties, but this declaration says, "we oppose and reject the principles of the Radical party, and we arm ourselves with a pistol, we disguise ourselves with a gown, we carry our signal instrument, and we punish any man who discloses any of our affairs with death, and all in order to oppose and reject the principles of the Radical party." What, gentlemen of the jury, have we come upon in this agreement? It is an agreement to oppose a political party without discrimination. It is not individuals of the party who we are to be opposed, but we are to "oppose and reject the principles of the Radical party." We are to do it with "pistols and in disguise," and with our "signal instruments," and any man who tells of it shall die. Now, then, look at this agreement. We have discovered that there is an organization, armed and disguised; we have a penalty of death for a divulging member; and all, according to its own declaration, in order that we may oppose and reject the principles of a political party of the State.

What next? "No person of color shall be a member of this order." The lines are now removed, and this order is seen not only to be a political organization, but it is found now to be aimed against those of a particular color. "No person of color shall ever be admitted a member of this order." Why not? Can we not suppose that persons of color may be on the side of "justice, humanity, and constitutional law, as bequeathed to us in their purity by our forefathers," in the language of this oath, yet no person of color, whatever his principles, whatever his life, shall ever be a member of this order. Here you reach the touch-stone of this conspiracy, and you find it an armed, secret, disguised confederacy, punishing its members with death for divulging its secrets, and aimed against the Radical party and excluding every person of color from its membership. That, gentlemen of the jury, is what they have written, but I need not tell you that no conspirators ever committed to paper the entire scope of their agreement. They don't trust it to any paper to disclose to the world the extent of their purpose for which they combine; and therefore you don't expect that even this agreement, as it has now been presented to you, would disclose the entire purpose, and plan, and mode of operation of this Klan. But this much appears, and you will not forget it, that under the written

terms of this agreement, it is a secret, disguised, armed conspiracy, directed against a political party, and ultimately against the colored portion of our fellow-citizens. That, gentlemen of the jury, is what we find to be the nature of this conspiracy, simply from an examination of its written agreement.

I now come to another kind of evidence which will determine for you what was the purpose of this organization. It is the declaration and testimony of its own members. You have seen what there is in this paper, what they say they meant in explicit terms. Now let us see how this was interpreted by those who have acknowledged that they took this oath, and subscribed to this constitution, and who have become full members of this order.

You recollect the testimony of Mr. Osmond Gunthorp, that he joined this order of Ku Klux, in 1868; that he thought, and was told that it was an organization simply for self protection, and that he joined it with that intent; not that he himself apprehended any danger, but seeing that all of his neighbors joined this mutual protecting society, he therefore joined it himself. And what does he tell you he found when he got beneath its written oath and constitution, was its purpose? He tells us that it was a political organization; that its purpose was to control the elections, and while they had not yet risen to the height of killing negro voters, they even then proposed in 1868, to go to the election at Rock Hill, and without the use of any great violence, still to control the election, by crowding away the Radical voters from the polls. You remember, gentlemen of the jury, that this was in 1868, and that Osmond Gunthorp was then a member of the Ku Klux Klan, and that that was its purpose, as he discovered for himself after he had taken its oath and found out its principles and purposes. Now let us turn to the testimony upon this point. I will read a portion of the testimony of Mr. Gunthorp:

Q State whether you joined the K. K. K., and when. A I joined it, sir, in 1868, in the month of August; I am not certain about the date.

Q Where? A Down near Ebineus.

Q In York county? A Yes, sir.

Q Who initiated you? A Dr. Ebenezer Avery.

Q Can you give us the substance of the oath you took? A No, sir; I cannot.

Q What was its general import, so far as you can recollect? A I cannot recollect near all of it; that we was opposed to the Radical party; and were to protect fellow-members' widows and their households, female friends, and I believe that was about all.

Q And what was the penalty? A The penalty for divulging the secrets of the organization was death.

Q What was the mode in which the purposes of the organization was to be carried out—the opposing the Radical party? A I think it was the intention of the organization to control elections.

Q How were they to do it? A At that time, the understanding I had was to do it by intimidation.

Q Did you have any order to go out and assist in that business? A No, sir; I never received one.

Q Did you receive any notice to go to Rock Hill? A No, sir. I received no notice, but I understood the day of election, in 1868, they were not to use any force, but by crowding the box they were to keep all from voting they could.

Q All who? A All of the Radical party.

Q Who were they to keep away from the polls? A All I understood was, they were to keep all the

Radical party from voting they could, by crowding the ballot box.

Q What did you do then? A I never went to the election at all.

Q What did you do in reference to the Order? A I left it, sir.

Q Why? A Because I believed it was not what I thought it to be. I didn't understand, when I went in, that it was a political organization, and I saw it was, and it was on these grounds.

Q What did you think it was before you got into it? A I thought it was an organization for the protection of each other, but not to interfere with any other party.

Q When you came inside of it what did you find it to be? A I found it to be a political organization, to try to control the elections for the Democratic party, at that time.

That is his testimony of the purposes of this order in its young days, and probably before it had enveloped in its meshes the greater part of that community; but as far back as 1868 Osmond Gunthrop, a member of that order, discovered that its principles were political and that it intended to control the election in the interest of the Democratic party.

I come now to the testimony of Cornelius S. Gunn, also a member of the order, who was in communication and conversation with members of the order, a man of intelligence, and a citizen of York county, well informed, and acquainted with the persons and purposes of the order, and what does he tell you? He tells us in precise terms that its purpose was political, that it was aimed against the Radical party; and especially against the colored members of the Radical party; and that its mode of operation was killing and whipping of prominent Radicals and the terrorizing and intimidation of the negroes generally throughout the country. And let me call your attention, gentlemen of the jury, to the fact that this testimony totally uncontradicted. Our witnesses tell you is that its purpose was directly political, and aimed directly against the colored people, and they did this by whipping and killing. Now if that was not the purpose of the order, where are its members that they do not come forward to day and rescue this imperilled brother? If it is a charitable association for mutual self protection, where are its members that they do not own their membership and keep their oaths to rescue a distressed brother? Is not this a brother Ku Klux in distress? What hinders them from coming forward to-day and saying, we are members of the order, and we will prove to you that our purposes were innocent; that we did not aim against a political party, but simply to protect our lives, our children, and our friends from negro outrages? I will tell you why, gentlemen of the jury, why it is. It is because every one of them knows that if he puts himself upon that stand and confesses that he belonged to the order described in this paper he is a felon, and goes to the Penitentiary. That is what keeps his brother Ku Klux from coming to rescue an imperilled brother; that is what keeps them out of this court and from contradicting Mr. Gunthorpe's and Mr. Gunn's testimony. An innocent order indeed! Our friends tell us it is a charitable association, and yet when one of those members who is simply in the execution of the purposes of this charitable order is put upon his trial they are as silent as the grave. Not one of them to-day dares to acknowledge himself to save Robert Hayes Mitchell, his brother, who belonged to that organization. Where are they? And echo answers, where? The officers of this court cannot find them, and those who sit here to-day sit with sealed lips.

Well, gentlemen of the jury, what does Mr. Kirkland I. Gunn tell you? He says that it was political, that it was against negroes, and that its purpose was killing and whipping and intimidating the negroes of that county generally, in order to control the elections.

For one moment, gentlemen, let me call your attention to some of the testimony of Kirkland I. Gunn:

Q What was the obligation and purpose of the Klan? A. The obligation, sir, that I took was that I

should not divulge any part of the secrets of the Klan that I had joined, and it was for the purpose of putting down Radical rule and negro suffrage.

Q What was the general object and purpose of the order? A. That was the purpose of the organization, sir.

Q Have you ever heard the constitution and by-laws of the order read? A. I heard it read, sir, when I was initiated.

Q How were you initiated? Describe to the jury the process of initiation. A. I was knelt down, sir, and the oath was read to me, and then the constitution and by-laws were read to me, sir.

Q Now, I want you to look at that constitution and by-laws and say whether that was the constitution and by-laws of the order.

[Handing to the witness the constitution and by-laws which we have here.]

Q Mr. Gunn, you have stated the general purposes of the order. Now, will you please state to the jury how those purposes were to be carried into effect?

Gentlemen of the jury, I am sure you do not forget that this witness is a Ku Klux—a member of the order.

A Well, sir, that is known, I think; but the way that I was told that they were going to carry this into effect was by killing off the white Radicals and by whipping and intimidating the negroes, so as to keep them from voting for any men who held Radical offices.

Mr. Johnson. We reserve objections to that; it is of no consequence.

Q Pursuant to that mode of intimidating and killing voters, was there anything of the kind done, within your knowledge?

Mr. Sanbery. We object to that question—object to his saying what he was told.

The Court. We think the question may be asked. [To the witness.] State what was done in pursuance of the object of the order. What was done pursuant to the purpose of the order as you have stated it according to your knowledge? A. Their principle was to whip such men as they called Radicals, and men who were ruining the negro population, &c., and they murdered some.

Q Well, Mr. Gunn, when did they do this; night time or day time? A. In the night, sir.

Q State whether the organization was armed according to the by-laws? A. Yes, sir, they were armed.

Q What were their arms? A. Most generally pistols, sometimes shot guns, muskets, &c.

Q What is the Ku Klux gown referred to in the by-laws? A. It is a large gown made—all that ever I saw was made of some solid colored goods; I don't know what the color was; it looked dark in the night; I never saw a gown in daylight.

Q What were those gowns worn for? A. To disguise the person, sir.

Q Were the purposes of the order to be carried out with the disguises on? Yes, sir.

Q When the Klan was assembled to prosecute any of its purposes, such as whipping and killing, were they disguised or not? A. Always, sir.

Q And always moving when? A. In the night.

He then testifies that he himself was ordered upon two raids. I now pause for a moment to consider the value of Mr. Gunn's testimony. It was developed in the cross examination that Mr. Gunn had been to Georgia, and had visited the Attorney General of the United States, and that he afterwards saw him and made the disclosures to him of his connection with the order, and of its purposes and methods. That he afterwards went to Washington, and in an interview with the Attorney General of the United States, he received \$200. Now, gentlemen of the jury, I understand that if a party before giving testimony, or divulging secrets, is promised any reward, or inducement is held out to him to make his confession, or give his evidence, that it tends to destroy and diminish the credibility of the witness if it can be shown that before he gave that testimony and made these disclosures, before he stated to the Attorney General of the United States, that he was a member of the order, and what its purposes were, he had been promised or received a reward; but as to any evidence, that Mr. Gunn, previous to his disclosures to the Attorney General of the United States being promised, or that he

received any bribe or offer of reward, there is none. He went, and made his disclosures, and there is not a title of evidence in the case, that his disclosures were prompted by any offer or any expectation of reward.

Now, gentlemen of the jury, it was not improper for Mr. Gunn, who was a man of business, whose time had been occupied, and who had been diverted from following his occupation, from disclosing this conspiracy which up to that time had maintained its secrecy, nor was there anything objectionable on the part of the Attorney General of the United States that he gave Mr. Gunn that money under those circumstances. I say there was not, gentlemen of the jury, and his testimony goes to you to-day free from any evidence that before he made these disclosures he had been enticed in any way except by his own conscience and will to make those disclosures.

But, gentlemen of the jury, the testimony of Kirkland L. Gunn may be let out of this case and still the agreement is as confirmed by the testimony of other witnesses, against whom even this suspicion, which is without legal foundation, cannot be raised. We have confirmed what I have argued to you to be its purpose and method, and I come now, gentlemen of the jury, to the testimony of Chas. W. Foster, another witness who confesses to you that he was a member of the order, that he was for a long time a member, and, unlike Mr. Gunn, had no upon-raids; unlike Mr. Gunn, he received his interpretation from the acts of the order, and not from its declaration or from their written constitution and by-laws. Chas. W. Foster was not only a Ku Klux, but he was an active Ku Klux. He went upon raids and executed the purposes of the Klan in overt acts.

Let us look at his testimony:

"Q. Do you remember the oath you took? A. I suppose I could.

Q. Tell us as near as you can the character of that oath? A. Well, sir, the first was to protect women and children, I believe; put down Radicalism, put down Union Leagues, &c.

Q. What was the penalty, if anything, to the oath? A. The penalty was, if a man divulged any secret of the society he was to suffer death! death!! death!!!

Q. Would you recognize the oath if you should hear it again? A. I suppose I would, sir.

Listen to this. [Counsel here read the oath as read to Gunn.]

Q. What do you say to that obligation? A. That is about the same that we had.

Q. Now, Mr. Foster, state what the general purpose of the order was? A. The general purpose of the order?

Q. Yes, as you understood it, practically carried into effect?

Then that question is objected to, and finally the court says:

"Ask the witness what the purposes were to be carried out."

Q. How were the purposes of the order to be carried out? A. Well, sir, generally, whipping those men who belonged to the League, members of the League.

Q. The Union League? A. Of the Union League, both white and black.

And then he describes, as you, gentlemen of the jury, will remember the various raids upon which he went, and among others he details the circumstances of the raid upon a man by the name of John Thomasson, and the question is:

"What was he accused of? A. He was called a Radical in the neighborhood; he had taught a nigger school, and voted the Radical ticket."

Q. Was that the reason of your visiting him. Tell us what they said? A. They called him out, and told him to let Radicalism alone.

Gentlemen of the jury, you remember the testimony of Foster in its details, and I need not occupy your time in going over it again, and now where do we arrive? We have examined the written agreement and constitution, and have found that it provided for a secret organization, and that the penalty of divulging its secrets was death; that it was armed; that it was disguised; that it was aimed against the Radical party, and more particularly against the negroes of the Radical party. That is the written agreement. Now, what have we seen from the statements of those members of the order as to its purposes, as developed by its acts? Why, that in 1868, in its incipency, it aimed to control the election for the Democratic party, and that in 1870 and 1871, by the testimony of Mr. Gunn and of Mr. Foster, and the testimony of other witnesses, which you will remember, its purpose was still to control the elections; to intimidate the negroes and prevent them from

a free exercise of their judgment in the matter of suffrage.

Those are the two kinds of proof, gentlemen of the jury, that refer to this general conspiracy: the direct proof of the written agreement, and the indirect but still more conclusive evidence of the acts and purposes of the order, as stated to you by those who had taken the oath, who had gone upon raids, who had conversed with members of the Klan, and who knew it thoroughly in its purposes and operations. Now, what have we to show? We have, gentlemen of the jury, first, the Ku Klux Klan—an armed, secret, political organization—sworn by an oath under the penalty of death, to keep its secrets from the world; carrying out its purpose throughout the county of York, by the killing, whipping, and intimidation of the Radical party, and more particularly of the negroes belonging to that party. Gentlemen, now, against this evidence, what have we? If it be, as the impression has been sought to be made—If it be anything less than what I have described it to be, why has it not been explained to-day in behalf of this poor prisoner? That is what the government says your Ku Klux Klan means.

Why is it not denied? Where is James William Avery, chief of your county? Surely he could come here and tell you that in 1868 he organized a society for the mutual protection of himself and his neighbors; he could show you that its purpose was within the law; and that all the acts for which he is responsible, or which he committed, were strictly within the law, and no conspiracy. Where are the chiefs of the Klan who enticed this poor prisoner? Is this door barred to their entrance? Why are they taking their ease in foreign lands, where they cannot be reached? Here is a distressed brother member, charged with being a member of a conspiracy to deprive divers male citizens, of African descent, of their right to vote, and the evidence against him is, that he belonged to an illegal organization. Can it be explained?

Gentlemen of the jury, not a member of the order stands here to contradict what we have proved to be the purpose of that order. Why, gentlemen, if this prisoner is to be defended, how much easier to have put his defense upon the testimony of his fellow members. What is the evidence they must submit if he is to be saved? How much easier it would have been than to bring our distinguished friends here from a distance to aid him. In what? not their testimony which would acquit him, but simply their learning and their eloquence, to persuade you that this testimony is not sufficient to convict. They are under no obligations. They have taken no oath to protect and defend fellow Ku Klux; they are not knights errant; and they do not come here to-day for love, but they come here in the exercise of their profession; while all those who swore with Robert Hayes Mitchell that they would stand by and protect their fellow-members, are nowhere to be found on this day of a brother's trial.

Now, gentlemen of the jury,—this conspiracy, for which we are prosecuting this defendant, is the general conspiracy,—which we have proved is embraced by the agreement and statement of members of this order.

I now come to the second division of this argument, which is the specific occasion on which this general conspiracy, embracing among its members this defendant, went upon the practical execution of their agreement. We come now to the 6th day of March, 1871; we see whether Robert H. Mitchell, this prisoner, with the others named in this indictment, did, on that specific occasion, undertake to carry out this general purpose which we have described in the argument, and by the statement of members.

You, remember, gentlemen of the jury, the story of the Jim Williams raid; that it was on the night of the 6th of March, 1871. You remember the testimony of Elias Ramsey, of John Caldwell, of Andrew Kirkpatrick, of Samuel Ferguson—all of them members of the Klan, and all of them present on that occasion. You remember the meeting at the Briar Patch, and the

conspirators there assembled, going to the cross roads, near Squire Wallace's, where they met the four Shearer boys, and where this prisoner, Robert Hayes Mitchell, first appears. You remember that the four Shearer boys were sworn into the order at the cross roads, near Squire Wallace's, and then they took their march. Here, gentlemen of the jury, we have the conspiracy literally and virtually in motion. This general conspiracy of the Ku Klux Klan now takes up its line of march for the accomplishment of its purposes.

And now comes the evidence which points to this defendant as guilty upon this indictment. Now, mark, near Squire Wallace's their ranks are recruited by the defendant, and they take up their line of march, disguised, marching two by two, under the lead of Dr. James B. fus Bratton, upon an innocent undertaking, upon a charitable errand! No harm intended to any one, but simply protection, against those horrible outrages of the negro militia. And here is James Rufus Bratton, the leader of that moving conspiracy. They come to McConnellsville; they arrive at the plantation of James Moore; they knock at the door of Gadsden Steele, a colored man; and now remember gentlemen of the jury, that every act and every word of any one member of that marching conspiracy is the act and word of every other member of that marching conspiracy. If the humblest man who rode in that conspiracy did an act, or uttered a word, it is the act and the word of every other man who formed that cavalcade. They came to the door of Gadsden Steele, on the plantation of James Moore; they bring him forth and question him about his gun, and not being satisfied with his answer, they take him to Mr. Moore himself, and calling him out, they ask him about the guns. He says that Gadsden has no guns.

Well, what ticket did he vote? Nothing political! Self protection! Charity! Mr. Moore says I will not tell a lie for him—"he voted the Radical ticket"—he and Gadsden Steele—and the voice comes forth, "There, God damn you, we'll kill you for that." Not political! Only a search for guns! All because of the puns among the white people. Yet Gadsden Steele's offense, for which he is promised death is that, by the statement of Mr. Moore, he voted the Radical ticket. Who uttered those words? No matter who uttered them; some one of those disguised men there in front of Mr. James Moore's house uttered them, and the voice was the voice of the conspiracy; every man uttered those words! *uno fatus, uno spiritu*—one breath, one attempt. We will kill you because you voted the Radical ticket.

What now? Gadsden Steele is told to mount a mule and go with them, and conduct them to Jim Williams' house. He mounts the mule and goes a short distance. He is then put down, and two men who are riding with them—disguised Ku Klux on this Jim Williams raid—then turn to him and point their guns at him, and then they declare the whole purpose of that night's raid. They say to him, "We are going to kill Jim Williams, and we are going to kill all you damned niggers who vote these Radical tickets." Whose voice was that? No matter whose voice it was, it was the voice of conspiracy, and yet we are told this was not a conspiracy to interfere with anybody's voting. But they say, "We are going to kill Jim Williams, and we are going to kill all you niggers that vote the Radical ticket." That is the voice of the conspiracy—not of Rufus Bratton only, but of Robert Hayes Mitchell. That is in evidence before you to-day, as the purpose of every man who rode on that marching conspiracy.

Well, gentlemen of the jury, follow them; they pass on, they turn aside from the public highway and cross the field; they halt in a piney thicket and dismount; a detail is ordered to go forward; the detail is made up, and they put on a disguise, according to the testimony. From half an hour to an hour, while they are absent, nobody hears anything from them, except Elias Ramsay, who heard what he thought were the cries of a woman in distress. They return, and the order is given, "mount—mount—and let us be off."

After they have moved away, some of these conspirators learn for the first time that Jim Williams has been killed. John Caldwell rides to the head of the column and asks Dr. Rufus

Bratton what they had done with the nigger, or where the nigger was. His reply is "he is in hell I expect." He draws out his watch, and looks at it by the light of the moon, and says, with a coolness that I think was never excelled, "let us make haste, we have got two or three more to visit yet to-night." He has only hung one negro, and he is going to visit two or three more.

You see here, gentlemen of the jury, as you will perhaps, never see again, the terrible power of organization. Probably no one, no two, no three of that party could have been induced to commit murder; but under the cloak and sanction of this vast organization the responsibility of it was divided until it was not felt. Murder, violent murder, excited no compunction, because behind Rufus Bratton was a column of seventy men, who were to divide the responsibility with him. This is the tenor, gentlemen, of conspiracy. That is why these terrible combinations are made possible, because no man in that seventy felt that he himself had murdered Jim Williams. But the deed is done, the secret is safe and every man says, we are all sworn to secrecy. Williams is dead, and the world will never know who hung him. Ah! gentlemen of the jury, as a more eloquent voice than mine has said, "That was a dreadful mistake, such a secret can be safe nowhere; the world has no nook or corner where the guilty can stow it away, and say it is safe." And here, to-day, after months of delay, you stand face to face with one of the men who joined in that conspiracy to kill Jim Williams.

Then, gentlemen of the jury, follow them, as they leave that piney thicket and march again upon the highway. We know not where else they went; but we do know that, on their return, they visited the house of another colored man, whose name is Hiram Littlejohn, and who has testified before you. And Gadsden Steele tells you what they were going to do as they marched down to Jim Williams'. Hiram tells you their purpose as they returned. They called him forth and took from him his gun, and then told him: "We have killed Jim Williams, and we intend to rule this country or die. When you vote next time, vote the Democratic ticket." Whose voice was that? It was the voice of the conspiracy and every man who rode with it. What does it say? "We have killed Jim Williams, and we intend to rule this country or die. The next time you vote, vote the Democratic ticket."

Now, gentlemen of the jury, "order reigns in Warsaw," and York County is safe; all other sections of the county have already been subdued, and only in this one belt of country, where lived this terrible captain of the negro militia, only is Radicalism unsubdued. But now the head and front is gone—and safety is restored to the white people of York county. Why, gentlemen of the jury, panic among the white people!—fear of the negro militia!—why didn't they tell Gadsden Steele—why did they not tell Hiram Littlejohn—that he was never again to join the negro militia; that he must quit Jim Williams' company. They said nothing of the kind, but passed on with their guilty secrets.

Now, gentlemen of the jury, what evidence can be more complete? Here is the written agreement; here are declarations of members of the order; and here is the specific occasion on which these Klans assembled; and here are their purposes disclosed on the night of this raid by its own members, while going and while returning.

Now, gentlemen, this defendant was there; he was a member of the Ku Klux Klan; he had taken the oath; he joined in this raid; and the acts and declarations of his co-conspirators are his acts and declarations. It has been established that Robert Hayes Mitchell was a member of the party; that he went upon this Jim Williams raid. And there, gentlemen of the jury, is the end of our testimony with reference to the first count of this indictment, which charges that Robert Hayes Mitchell, with others, conspired to hinder and prevent others male citizens of African descent of their right to vote at future elections. Gadsden Steele and Hiram Littlejohn so testify. We say nothing about others whom they visited; we say nothing yet about their purpose and the actual killing of Jim Williams. But here is a conspiracy, which, by its written agreement and the understanding of its members, is aimed against negro Radicals; and here it is in motion, going upon Gadsden Steele and upon Hiram Littlejohn for the express and avowed purpose of affecting their votes by

preventing them from voting or from exercising their free choice at future elections.

We, now, gentlemen of the jury, come to the second count of this indictment, which charges that this defendant, with others, conspired to injure and oppress Jim Williams because he voted, in previous elections, and because he voted for A. S. Wallace, as a member of Congress. It is, gentlemen of the jury, upon this count of the indictment, and with reference to the intent of these conspirators, as they went to the house of Jim Williams, that the chief controversy depends. Did they go there to injure and oppress Jim Williams because he voted the Radical ticket, or did they go there to put him out of the way, because they were in terror from his threats, and from his position as a captain of a negro militia company? In the first place it is not doubted that this was a Ku Klux raid; all the men who went there were members of the Ku Klux order. They went there upon the same purpose—it required the presence and the action of that order. As we have seen from its constitution and by laws, but more particularly from the statements of its own members, its purpose was to control the election, and not to protect the negro militia of Alabama, except so far as their being armed may have been supposed. In the minds of these conspirators to have contributed to their strength and determination as Radicals.

So much is not doubtful, that this was a Ku Klux raid, and that the leading and continual and constant purpose of this order was to intimidate the negro voter; and if we were to admit, gentlemen of the jury, at once, that they did go there to disarm this captain of a militia company, and to take his life, it would still be for these conspirators to show that it was not for the sole purpose of terrorizing that community on account of negro radicalism. That is the main motive of the order and continual purpose as we have shown; and if, on this occasion, it was no more than simply to disarm the negro militia and to kill the captain of a militia company because he was a captain; then, you will require conclusive evidence that on this occasion they were not still attracted by that constant and controlling purpose, through this negro militia, and the disarming of this company, to put down Radicalism.

The constitution tells you that was its purpose, and members of the order tell you it is the purpose, and what evidence, gentlemen of the jury, have you that on this occasion, while the specific act which they did was the killing of the captain of a militia company, and the taking away of guns from the members of that company, that it was not with the purpose of that purpose for which Gunthrope and Gunn, and Foster told you the organization existed in York county. Let us look, gentlemen of the jury, for a moment at the operations of this Klan; we hear but little of it, except here and there, until after the election of 1870. It is in evidence that the organization existed as early as 1868, and prior to the fall election of that year, but it slumbered, so far as we know, and did not manifest itself in overt acts.

But you know, gentlemen of the jury, that after that election this Klan commenced their operations in that county. They went forth then, having practically failed in that election, even under the persuasion of the candidates of the Reform party, to alienate the colored people from their allegiance to the Radical party; they then entered upon their active crusade, through this organization, for putting down Radicalism. It is in evidence that all over that county, prior to the Jim Williams raid, negroes had been whipped and had been killed; that a state of terror had arisen which drove from their homes at night the greater part of the negro population of that county; even Mr. Lowrey, a witness for the defense, tells you that upon his plantation, and right in the charmed circle of the Jim Williams militia company, the panic was so great with his own negroes that he could not restore confidence, and they fled their houses at night for fear of the Ku Klux. All over the county, therefore, gentlemen, Radicalism was subdued except in this belt of country between Yorkville and Jim Williams' residence. Now, gentlemen of the jury, shall Radicalism be subdued there? By disarming the negro militia, by taking out of their hands the only protection that the government has given them. And first by threats and then by persuasion they besought this Captain Williams to deliver up his arms and trust himself to the tender mercies of this organization which had murdered Rountree, and terrorized the entire community, except in that narrow belt, but the brave man refused, and I honor him for it. There is not a drop of blood in my veins that does not stir to-day in grateful response to this heroism of an uneducated negro who desired to protect the lives and lib-

ties of his fellow-citizens. Would to God that others would have been then inspired with the determination of this militia captain who refused, gallant man that he was, amid the prevailing cowardice, to surrender either his principles or his arms; and when the names of these conspirators who murdered him, shall have rotted from the memory of man some generation will seek for marble white enough to bear the name of this brave negro Captain. Radicalism, some, said! Only the narrow bridge left of Jim Williams' militia arms, and they won't give them up; and Radicalism will prevail and be unobdured till those arms are seized and that brave negro killed! And who goes there to do it? Is it the citizens generally who seek protection? Did some of my friends who sit here join in this defense? Did they go? No; the Ku Klux Klan goes! It is not a spontaneous uprising of the people who have heard these threats, but it is the march of the disciplined, disguised, and sworn Ku Klux Klan. If it was to seize the negro arms, was not that a mission in which every citizen could join? Yet not a man went upon that raid to seize those arms, except the sworn members of this political and disguised Ku Klux Klan. Gentlemen of the jury, you know what they went for; you know why those arms were a terror; you know why Jim Williams was the object of that raid. It was because their mission has not yet been accomplished, and Radicalism could flourish and be protected under the gleam of Jim Williams' bayonets.

But, gentlemen of the jury, he had made threats; he was a dangerous man, they say. About the question of Jim Williams' character, gentlemen of the jury, I have little to say. We have had straggling evidence that he was a dangerous man, but up to the time of his death, not a single act, not a single scrap of testimony, gentlemen of the jury, of any uncivil or disorderly act had been put before you here, either on the part of Jim Williams or of any member of that militia company. Now, if Jim Williams was a dangerous man, and had excited a panic among the white people of that community, could they not have shown us, by some of his acts, by what he had himself done, or allowed his militia company to do, that he had demonstrated himself to be the dangerous man that community reported him to be? And yet, up to the hour of his death, no disorder, no misconduct on the part of the Captain or his company, has been brought to your notice. On the contrary, a meeting was held when these raids were going on all over the county. Andy Tins calls a meeting at the suggestion of the white people to know whether these militia arms are the cause of this Ku Kluxism, and of all this anxiety that pervaded the country, and then they agreed with him that it was not the militia arms. But Jim Williams' threats! Williams' threats "to kill from the cradle up." Well, now, gentlemen of the jury, that is a matter for you. If you believe that Jim Williams made those threats, and the making of those threats was the reason of the motive which induced the Ku Klux to go upon that raid which resulted in his hanging, then you have given to this defense some color for the position which they will take, that the intent was not to injure him on account of his politics. Gentlemen of the jury, do you believe he ever made those threats? Do you believe that, except possibly in view of the raiding of the Klan all over the country and the fact that his own company and his neighbors were hunted like wild beasts from their homes; except in connection with that, that he ever uttered any threats against the white people of the county? I can believe, gentlemen of the jury—and I don't blame him for it—that he said and that he meant that if they didn't stop murdering and whipping his people, retaliation would commence. But, gentlemen of the jury, who are these witnesses who tell you of these threats? They are the white people of York county and three Democratic negroes! No negro who was not a member of the Democratic party—who was not anti-Radical—ever heard Jim Williams make these threats, or ever heard of them until after he was killed. There is the evidence, gentlemen of the jury, and I leave it with you. I do not believe, and I think you do not believe, that these threats were made, except possibly, and with the qualification which I have taken, in view of the murders and the raiding done upon the colored people of York county, and if they were so made they were justifiable. But whatever he had done, and whatever his position in that community,



these conspirators who went to murder him, told Gadsden Steele on their way that their purpose was to kill those who voted the Radical ticket, and on their return they told Hiram Littlejohn the same; and as I have already shown you the fact that the Ku Klux Klan was selected to do this work points with irresistible certainty to the objects which they had in view in taking off Jim Williams. They joined the crusade against Radicalism, and everywhere else the arms had been given up, and the negroes had been subdued, but Jim Williams still slept in his house, and his company still had their muskets, and he told them that if these raids did not cease, perhaps he told them—I had almost said I hope he did—that if these raids did not cease, somebody besides negro Radicals should suffer. The Ku Klux Klan swore to oppose Radicalism; armed and disguised was the organization that went there to capture and destroy this last stronghold of Radicalism in York county. That, gentlemen of the jury, was the head and front of Jim Williams' offending. Panic among the white people! And what did they do? Were they so panic stricken that they slept out of their houses? The negroes were scattered in the woods for three months, and there was such a terrible panic among the white people! there had been burnings, yet in not a single instance can this be shown to have taken place till the raids had been frequent and general; if they raid d upon Jim Williams because of the burnings and panic, what was the object of the raids in December and January, immediately following the election. You know that those fires, whatever they were, had to do with them must have been the result of the provocation which they had received in the death of Tom Roundtree, and the whipping of a large number, and the maiming of a large number of negroes of that county. Whipping the negroes and killing them throughout the country, and then because fire takes place, justify the killing of Jim Williams because of these fires. Gentlemen of the jury, this was only a grand and complete crusade against the negroes—Radicals,—according to the testimony of witnesses that we have put upon the stand, it has been to accomplish that one purpose of opposing Radicalism, and of terrorising that negro population till they should be afraid to exercise their right. Now the attempt is made to substitute for this purpose of the Klan, and the killing of colored parties, but on the only charge of this indictment of seeking to deprive Jim Williams of his right to bear arms, and killing him because he insisted upon that right.

Gentlemen of the jury, this is our testimony in support of this indictment: Robert Hayes Mitchell was a member of the party who entered the house of Jim Williams and hung him on the night of the 6th of March, 1871, by evidence which is not contradicted. He was there throughout that whole raid. The object of that conspiracy of which he was a member, was the terrorism and the whipping and the killing of the negro Radicals of York county. He joined it, and on the night of the 6th of March he went in the execution of this purpose to injure, oppress, and did in fact kill Jim Williams in execution of the purpose of the Ku Klux Klan; of which he was a member, and of which more were members, were then and there present. He stands arraigned to-day, and your verdict is asked for, of "guilty of these two offenses." For Robert Hayes Mitchell, the prisoner at the bar, who can have on this occasion any feeling but that of pity. No man is so poor that he has not friends whose happiness is linked with his and whose hearts would be rung with anguish for his punishment and his suffering, and yet, to-day, unfortunately, he is the representative of an organization which is responsible before you and the country for a succession of crimes, for a purpose broad and general, of putting down a political party by killing and whipping its negro members. I wish we could ask for mercy upon Robert Hayes Mitchell; but if you could have the eyes of fancy behind Robert Hayes Mitchell you would see the anxious eyes of a Klan—an organization which embraces thousands of members, scattered all over a section of this country; it is they who are on trial to-day, and he is the poor and unfortunate representative of a guilty and horrible conspiracy. Beyond you, gentlemen, there is a power which can graduate punishment according to the guilt of the individual; but your duty to-day is simply to say whether Robert Hayes Mitchell did conspire with the Ku Klux to deprive colored citizens of York county of their right to vote at future elections, and whether he went to "Jim Williams" and injured and oppressed and finally killed him, in the execution of this same purpose, and because

he had voted, at a previous election, the Radical ticket. You are shut up, gentlemen of the jury, by the law, to the evidence and to this issue, and you cannot fail to recognize that it is not this defendant, nor those even who are indicted with him that you desire most to reach and affect by your verdict. It is the responsibility that comes from your duty to strike through him a final blow against a conspiracy, which, in its inception and progress, and in all its operations has been aimed at the destruction of your dearest rights, and to strike away the protection which now exists under the laws of the country for an entire class of our fellow citizens. That, gentlemen of the jury, is solemn enough and just enough to awaken all your interest, and to determine you to that verdict which the law and the evidence shall demand at your hands.

#### ARGUMENT OF HON. HENRY STANBURY.

May it please your Honors, and you, gentlemen of the jury: It is gratifying, gentlemen, not only to my learned friend who has just taken his seat, but to all parties, to witness with what close and undivided attention you have listened to the argument which has just been delivered. You know, gentlemen, those of you, at least, who belong to the colored race, that grave doubts have been entertained whether, in consideration of your previous condition, you have arrived at this time at a state of improvement which would justify your receiving the right to sit in judgment upon your fellow men, where you now sit in that jury box. So far, gentlemen, you have shown a disposition to give undivided attention to the case. You have at least shown one qualification for a jurymen—you have listened, but as yet, to one side—perhaps to that side to which your sympathies are most drawn. Now, gentlemen, can you hear the other side? Can you give the same undivided attention to the advocate for the defendant as you have given to the advocate who has stood up for the Government? If you can do that, gentlemen, you have gone one step further, and a great step further, towards vindicating your right to sit in the jury box. But individual attention is not all that is required of a jurymen. The jurymen does not hold up his hand before God and swear that he will listen to the argument and the evidence with undivided attention. That is not all; he swears that after he has heard the testimony and listened to the argument, and the case is committed to his hands, he will truly, justly, and impartially decide between the State and the prisoners.

Now gentlemen, if you reach that future point and show that you are capable of divesting yourselves of the prejudices of race and color, show that you can act with impartiality whether the man on trial is black or white, Radical or Democrat; if you can go that other step forward, then gentlemen jurors I am ready to say that you at least are entitled to sit in the jury box. If, therefore, you earn a title to exercise that supreme right over the lives, liberty and property of your fellow men, black and white, you have earned the highest title to enjoy all political privileges. Show yourselves fit for that, and you will show yourselves fit for every thing.

Endeavor, then gentlemen, to make it evident that you are entitled to this right, to sit in that box, by the exercise of impartiality, by weighing the evidence without bias, without prejudice, and founding your decision upon the weight of that testimony, wherever it leads you, whether to conviction or acquittal. Why, gentlemen of the jury, the ancients who were wise men, for there were wise men before our day; the ancients whenever they represented the form of Justice, represented her with a fillet round her eyes; and why did they blind-fold her? that when she came to decide between man and

man, she might not see the parties, that she might not see a friend on one side, or an enemy on the other; but giving her decision on which side soever that might happen to be. That is precisely the position in which a jurymen should stand. He should shut his eyes, having neither favors nor friendship, or any prejudice, either of race or political partisanship; he must do all that, or he is not fit for the jury box, and if he sits there and does not do that, although he may not be made to answer here, there is another bar where he shall be called to an account for his violated oath.

Gentlemen, when my associate and myself came here, from our distant home, to take a part in these cases, we did not come with any expectation of arguing any case upon the facts. We expected to argue the legal questions, which day after day, for a period of two weeks, you have heard us discuss at this bar; that was our business here, leaving it to the local counsel, engaged in the case, to argue these cases upon matters of fact, when they came to be heard before the jury. But as we sat here, these local counsel, our brothers of the bar, requested us to go further; and at least to give our attention to the case that was coming on, in the development of the facts, and to assist in the argument of any legal question that might come up. With that understanding, my colleague and myself took our seats, and in addition to arguing the questions of fact that arose in the trial of the case, insensibly, we have been drawn into the whole case. For after having listened to all the testimony given for and against the defendant, having weighed, considered and examined the charges upon which our client was brought here, my learned colleague and myself came deliberately to the opinion that a case was not made out that warranted you in finding that Robert Hayes Mitchell was guilty under either count of this indictment. Now, gentlemen, you must not take my word for it, of course, but I say that we would not have appeared in this case upon the facts, were it not that in our deliberate judgment this defendant has been brought here, charged with one offense, and an attempt made to convict him of another.

I shall now proceed to show gentlemen, what Robert Hayes Mitchell is charged with in the indictment, and what is proved against him; this may lead me into matters of law; I may follow my brother Chamberlain, the Attorney General, in stating to you some matters of law, which you will afterwards receive under the instruction of the Court, but which I must state in order to make my argument understood by you. First then what is this man charged with? You have heard a great deal of violations of order, and outrages, and especially in reference to what is called this raid upon Jim Williams, terminating in his assassination; but you must first ask yourselves, are you here to try the murderers of Williams, are you sitting in judgment on a murder case? Is there any one here to be arraigned for that murder? Not at all, the question is not before you, whether he was murdered, and who were his murderers, that you may meet out justice to them; you have nothing to do with that, there is no such thing charged against this defendant.

There are three counts in this indictment; three distinct charges; three distinct offenses. What are they? The first is that Robert Hayes Mitchell, combined with others with intent to violate the first section of this act by unlawfully hindering and restraining divers male citizens of African descent, etc., from exercising the right and privilege to vote at the October election in 1872; that is the first charge, that the con-

spiracy he entered into was in reference to a particular election, designated as an election to come off on the third Tuesday in October, 1872. That is exactly the scope and description they have given in the first count. It was to intimidate divers citizens of African descent from voting at that election to come off in 1872.

Where is there a particle of evidence that he has entered into such a conspiracy as that? Put your hands upon your hearts and answer that question. Has a single witness testified to you that this young man has entered into such a conspiracy as that? If you should find him guilty of that count you must find that he entered into that particular conspiracy—not the general conspiracy—(I will come to that by and by) to prevent their voting at a special election. It is not a conspiracy against general elections; it is a conspiracy against a special election, named and described in the count, that you are called upon to answer to under that first count. What is the second count? It still remains in the indictment.

But I must caution you against supposing that you are to try this defendant for what is alleged in that count, and I am glad that you are not to try him on that second count. What is it? They charge that Robert Hayes Mitchell, with a number of others, did conspire, with intent to injure, oppress, threaten, and intimidate Jim Williams, with what intent? To prevent and hinder his free exercise and enjoyment of a right and privilege granted and secured to him by the constitution of the United States, to wit, the keeping and bearing of arms. That is the particular conspiracy stated there, gentlemen; that was precisely what my client was after. On that famous night of the 6th of March, as I will show you, he was on his way to Williams' house to get his arms out of his house, and to secure them from any further use by him. Right or wrong, that was his purpose; that was what he was after; and therefore, as that was an unlawful thing, as the law does not authorize him to break into another man's house to get his arms, if they had adhered to this count, this defendant, notwithstanding all that could have been said by my learned colleague and myself, would have been convicted; you would have had plain proof before you that the purpose of that party and this young man as a member of it, on that night of the 6th of March, was to go to Jim Williams' house and to get his arms; but, gentlemen, that count is no longer in this indictment. It is dismissed, it is no longer under your consideration. What is in this third count? It alleges that this defendant conspired, with others, to threaten, intimidate and oppress Jim Rainey, &c., for voting at an election on the third Wednesday of October, 1870.

There is a very specific charge that this young man conspired with others to injure Williams, because he had voted at the election held in the Fall of 1870. Gentlemen, where is the proof of that? I would like to know. That he entered into a specific conspiracy of that kind to injure Williams, on account of his having voted. Recollect, that is what is charged in this count; that he conspired to injure Rainey, by breaking into his house, and taking his arms. But he conspired to injure him simply on account of his vote, given at that election, and that alone. Now tell me, gentlemen of the jury, where you find a single witness who testified that this young man entered into any such conspiracy as that? Now what have you got on the subject of conspiracy? Now there were conspiracies enough, according to the witnesses; but what are they? Conspiracies growing out of this written agreement which makes the constitution of the Ku Klux, that is the conspiracy of my learned friend, the Attorney General. Let us admit that it is, for the sake of argument, a conspiracy to put down the Radical party. Are we charged here with a conspiracy to put down the Radical party? There is no such thing here. We are charged with a conspiracy aimed at Jim Williams alone; the conspiracy which they prove out of these papers is

a general conspiracy against the whole Radical party. What next? They say that the acts of the parties engaged in the Ku Klux organisation show that they intended to put down this Radical party by murdering all the white Radicals and by whipping all the black Radicals, by controlling all the elections to be held, and prevent white and black Radicals, indiscriminately, from exercising the right of voting. A general conspiracy against the whole party; a general conspiracy to control all elections; this is the nature of the conspiracy they prove. Now you may think, because they prove a conspiracy a great deal worse, infinitely more general and pernicious than this that is charged, therefore, you can find him guilty of the particular thing; but gentlemen, such is not the law; and I will now proceed to address the Court, on that part of the case, to show you what is the law of the case, by which you must be guided.

May it please your honors, I was urging that in this indictment, the charges are of a particular conspiracy, and that the defendant could only be convicted by proving this particular conspiracy; and I stated that the proof, as claimed by the Attorney General, was only as to a general conspiracy; a general conspiracy to control all elections; a general conspiracy, to put down the Radical party; to kill, as one said, all the Radical white voters; and to whip all the Radical negro voters. Now give the proof as large a scope as possible, and it is proof only of a general conspiracy. They have charged a particular conspiracy in the first count, and a particular conspiracy in the second. The conspiracy charged in the first count did not aim at all elections; but against certain individuals, of African descent, being above twenty-one years of age, to prevent them from voting at a single election, viz: that of October, 1872; the conspiracy is confined to that election alone.

The second count, specifically charges a conspiracy against a single individual, Rainey, on account of his voting at the election, held on the 3d Wednesday of October, 1870. I said to the jury, I had heard no testimony as to this specific conspiracy. And, now, may it please the court, are these special conspiracies made out by proof of a general conspiracy?

I first refer your honors to Greenleaf on Evidence, page 101. [The counsel here read the authority.] Now here the particular intent and particular conspiracy is to oppress and injure Rainey. They give no evidence of that particular conspiracy, but of a conspiracy in a general way against all Radical voters. I also, refer your honors to volume 3, of Wharton's Criminal Law, page 349. Mr. Stanbery here read the passage referred to. We see from this authority that where a special conspiracy is charged, it cannot be proved by showing a general conspiracy; and that the converse is also true, that a general conspiracy cannot be made out by proof of a special one. Therefore, proof of a conspiracy to put down Radicalism, and defraud Radical voters out of their votes, and to oppress them, will not sustain a charge limiting the intent to one voter by name. I now refer your honors to a reported case, in seventh Metcalf's Mass. Reports, page 509. [The counsel here read the authority referred to.]

It was not necessary to enter into particulars. In the first count, it was not necessary to say that the conspiracy had for its object a single election of 1872. But they have described that conspiracy as limited to one election, and, this being a descriptive allegation, it must be proved. You call this man to defend against a particular conspiracy to prevent people from voting at a special election, naming the election. At that time, the fact was the conspiracy that he entered into, and they expect to make that out that he had not entered into such a general conspiracy, but had entered into a general conspiracy against voting at all elections. That will not do, as will be seen from what I have read, and I think my friend the Attorney General would not object to that. I have said that, in the judgment of my learned colleague and myself, the indictment fails for want of proof. Now, gentlemen of the jury, I hope you see the

points I make. I do not stand here to defend this prisoner against all conspiracy; I concern myself only about this case. I don't stand here to defend him from implication in the murder of Rainey, for he is not on trial for that murder. I don't stand here to defend him against a general conspiracy, for he is not so charged. But they have chosen to charge him with entering into a special conspiracy against parties intending to vote at a special election—a conspiracy that did not embrace any other election but that special one in 1872—and I ask you, upon your oath, is there a particle of proof that he entered into such a conspiracy as that? Have you heard a witness say one word about his having entered into a conspiracy to interfere with voters at the election in 1872?

As to the third count, where is there a particle of evidence that he conspired to injure and oppress Jim Rainey for having voted at the election of 1870? The gentlemen say we find it in that raid of March 1871, in which he was engaged. They say the parties went into that raid to punish Rainey for having voted the Republican ticket at the election of 1870; that is what they say was the purpose of that raid; that was the purpose in the mind and heart of that young man when he joined the party that night. Now let us carefully examine the evidence as to the motive and cause of that raid, and whether it was a matter relating to voting at all.

Now, gentlemen of the jury, go back to what had happened before that night of the 6th of March. As early as the month of August, in the year 1870, the Governor of the State, according to the evidence, had placed in the hands of certain of the colored people of York County, arms of the latest improvement, breech-loading rifles, called, I believe, Winchester rifles, the most improved and deadly weapon of that sort yet invented for rapid firing at long range. It was this sort of weapon that the Governor had placed in the hands of these people, organized as militia companies. Why is it necessary that a weapon such as this should be given to this organization? And how did it happen that not a single gun is given to the white people? An election was coming on to be held in October; there was great excitement in that part of the country—not about the Ku Klux, for there were no raids at that time—but about the election. There had been an organization of Ku Klux in 1868, but it had died out, so far as Ku Kluxing was concerned, before August, 1870. When these arms were placed in the hands of these people there were no threats from that quarter. Did the Governor give any arms to the whites? Did he place any Winchester rifles in their hands? When he armed the black company of 100 men did he give arms to a white company of 100 men? When he armed the blacks to defend themselves did he arm the white men to defend themselves? No; he armed the blacks and left the whites defenseless. What further, gentlemen; not merely one company, but at least three companies of black men were armed in that county with the public arms, but not a single company of white men. A black face was a recommendation to him for a musket; a white face was no recommendation. I think, gentlemen, you will go for equality; I hope you of the colored race will not expect or desire to rule white men; you don't want to be better off than they are, do you? You don't want to stand above them, do you? You don't want to have arms and let them have none? Let me tell you, if you go for anything like that your triumph will be short, and your doom inevitable, if you insist upon being armed; while he is defenseless. Why gentlemen, he will put a stop to that. If instead of living on an equality with your white brethren, you seek to rule them, you will commit a terrible mistake; take my word for it, gentlemen. I am not an alarmist; you can only maintain your position here by fairness and justice to your white fellow citizens.

Governor Scott put these arms into the hands of these companies; each have not less than one hundred men; for what purpose? It was for organization; organization is an important thing; say my friends organization of the Ku Klux is a dangerous thing, because in organization men act together, and bring together an amount of force which nothing but an equal organized force can resist. If an organization of Ku Klux is dangerous, an organization

of colored militia may be made even more so. Armed, equipped and drilled, and made ready for war as Jim Williams' company was—gentlemen, put yourselves in the position of these white people. You know there are a good many white people in York county as anywhere else, and perhaps some bad ones too, but, gentlemen, there are women there who are not Ku Klux, innocent women who are not Ku Klux—there are people there who must be protected. After these guns are put into the hands of Williams' company and the other two companies, what next? They go to work with active drilling before the election; drilling just as if another war was about to commence, not drilling with old muskets, with which men may learn the manual of arms, but drilling with these dangerous weapons. But why are these improved rifles put into their hands? It is expected there will be another use for them than simply going through the manual of arms.

They were intended to be put in a condition to be made deadly instruments; and they got bayonets, and shortly afterwards by the agency of Jim Williams the company had fixed ammunition, balls all capped, ready at any moment to do their deadly work. What, gentlemen, did he want with fixed ammunition? Tell me that—say if he only wanted to go through the manual of arms, and by way of amusement to go out and muster and play soldiers, if that was all, what did he want with fixed ammunition? If he wanted to make a noise with his guns, a little powder would have answered; but it was something more than noise that he required, it was execution. Therefore he got that which the soldier gets when he stands in the front rank of battle. He got a bayonet and two rounds of ammunition for every one of his men. Against whom did he intend to use them, and under what circumstance? It looks to me now, before we go any further, as if there was some secret motive about it. As if there was some person or persons against whom those guns were to be used. He didn't get that ammunition to shoot away merely for sport. What, gentlemen, did he get it for, and what was he drilling his men for? Now if you can't answer that question, I will put a witness on the stand that will answer it; and who is he? Jim Williams himself, he shall answer it. What did those rifles and your drilling, and that organization mean? He shall answer himself. Nine witnesses that have been examined—five of them white men and four of them of your own color—nine of these witnesses have given his answer, and now what does Jim Williams say? Let him speak gentlemen for himself. Let us begin with that witness, gentlemen, who in point of time was first in order. Let us begin with Mr. Fudge; you recollect the witness, gentlemen; any man that has seen that witness and listened to him would not very soon forget him. He struck me as a man of no ordinary mark. Mr. Fudge tells you that he lives within a mile and a half of Jim Williams; that he had lived there for some time; they might be called near neighbors, and he was of the Democratic persuasion, while Williams was a Republican. He says just before the election last October, Williams came up to his house and called him out; wanted to see him. He stood one side of the gate and Williams on the other, and said that "he would like that he would vote the same ticket with him." He was not coercing voters, but was persuading. Fudge replied that he should like to vote the same ticket with him. "I cannot vote your ticket," says Jim. "I can't vote for certain persons," naming them, "can't vote for them at all," denouncing them as damned scoundrels. "You have got to come to vote for my men," Fudge replies "you will allow me to exercise my own opinion, and to vote my own way?" "Yes, but," says he, "I tell you if in this election, that is now coming off; if in this election that is now coming off, my party is not successful," gentlemen, pause upon the word, "my party is not successful, I will kill from the cradle to the grave, and I will lay this county waste." That was the declaration he made at that time.

Mr. Johnson. That was before the election of 1870.

Mr. Stanbery. Certainly; I say before the election he says "if my party is beaten at this election, I will kill from the cradle to the grave, and I will lay this county waste."

They asked this man on his cross examination—"Were you frightened at that?" "No, sir; I was not." "Why not?" "Because there was but one man—man to man," and he says, "I have never been frightened at any man;" and I saw by his face

and the calm, frank manner of the man, that he would want no help when he was attacked by only one individual. But he said he had an anxiety about his family. We asked him, "Was Williams serious, or was he joking?" He says, "He was serious." Do you believe, now, that this conversation took place? Do you believe Mr. Fudge is lying? What right have you, gentlemen, to disbelieve that man? His testimony has not been assailed by any one; his character has not been assailed by any one. Did the manner and conduct and appearance of the man induce you to believe he was telling a lie? No, gentlemen; the impression he made was in every respect favorable to the man—cool, collected and determined; not alarmed, not at all—perfectly tranquil. Can you be justified in saying, we cannot and will not believe him; the man is perjuring himself and attempting to deceive us with a false narrative? But he does not stand alone.

Let us see, now, how he is corroborated; whether other men have heard the same declarations from Williams. The next in order to whose testimony I will call your attention, is Lindsay. Fudge was a man of our color; Lindsay was a man belonging to the other race—he was a colored man. What does he say? Lindsay says that he lives on the road between Williams' house and Yorkville; that he was going to pay his taxes, and fell in company with Jim Williams on the way—both on horseback, riding towards Yorkville; and he found from Williams that he was going up to Yorkville to get ammunition for his company. When was this? The Friday before his death. Now what took place? In the course of conversation with Lindsay he repeated this same threat that he had made to Fudge the Fall before, almost in the same words. His words then were that he would kill from the cradle up; his words, as testified by Fudge, were that he would kill from the cradle to the grave. But to Lindsay, on that road going for his ammunition, he said his purpose was to "kill from the cradle up." He next, just before his death, has a conversation with one of his own color (Mr. McConnel—you recollect him well—a large colored man, with a loud, distinct voice.) In February, on the Sunday before his death, Williams was coming from Philadelphia Church and stopped at McConnel's house, and McConnel fell in conversation with him. He told McConnel he was going out himself; going out Ku Kluxing; he was going on that business, and that they would hear of a mighty work to be done by him, and that the burnings that they had had were nothing to those he would hear of. "Was he serious?" "Yes, sir; seemed to be in what he said."

Again, Bratton, also one of his own race says, a short time in January, at Bratton's place, where he lived, Williams told him that he intended to rule, that he would Ku Klux women and children. I don't know whether it was this witness, but to several witnesses he said he was going to make war; that he had been with Sherman; that he had learned how to make war and knew how to do it. Again with Mr. Atkins—the white man at the mill—he said to him "Mr. Atkins this fuss between the black men and white men, there is one way to decide it, let us go out into the old field and fight it out, and if we gain I will take;" that is the word he used then, "from the cradle, up." Then to Thomason, colored, "I intend to sweep from the cradle, up." Then to Long, at the blacksmith shop. You recollect that conversation, gentlemen. It was after he had been down to Columbia, this spring, and had returned. He came back dissatisfied, and said with an oath, that the Legislature was a set of drunken people, doing no good, idling and drinking, and

that Governor Scott was no better than they were; indeed he called him a damned rascal.

Mr. Johnson. Governor Scott?

Mr. Stanbery. And said Scott had not kept his promises. Then what was he going to do? "Kill from the cradle to the grave." It seemed to be a favorite expression with him. What, to some other witnesses? Why if the Ku Klux came down on him, what would he do? Kill the Ku Klux. Was that the retaliation he said he would make? Kill the Ku Klux? No; but if the Ku Klux came to interfere with the black people he would Ku Klux women and children. That was the way he intended to retaliate. I think I understood the Attorney General to say retaliation was admissible. I was sorry to hear such a statement and such a doctrine as that, in a community where the races are in a state of antagonism. Why gentlemen, if Williams had said, "if the Ku Klux come down here, and injure me, I will go up there and retaliate upon them," even that would not be justifiable. But that is not the thing Jim said he would do, if those Ku Klux came down in that neighborhood against the black people. What then? He and his company would Ku Klux white women and children, the offending ones. That was the declaration, gentlemen.

Now, gentlemen, here is Mr. Lowrey, who didn't hear Williams make these threats, but he heard of them. He met Williams and asked him if he had made them. "He gave me an evasive answer. I asked him if he had threatened to kill from the cradle to the grave." He did not answer, or answered evasively, but at last he says, "I did make them."

Mr. Corbin. I do not understand that he said that.

Mr. Stanbery. To that gentleman, Mr. Lowrey, he admitted the threats to kill.

Mr. Corbin. No, sir.

At this point the court took a recess of five minutes. When business was resumed, the counsel for the defense continued his argument.

Mr. Stanbery. Gentlemen, when the court adjourned I was stating what Mr. Lowrey had said when he came back to the stand, and I stated that he then said that when he first charged Williams with having made these threats to kill, &c., Williams gave him an evasive answer, but on the second time that he made the charge against him, Williams admitted it was true.

[The reading of the testimony was here called for and the stenographer read it as it has already appeared.]

Mr. Corbin. The distinguished counsel did not limit the statement, the way he limits it there. He entirely misrepresented the testimony as we understand it.

The Court. I think you had better let the counsel go on, without interruption.

Mr. Stanbery. I am not opposed to interruption, personally.

The Court. We are, sir.

Mr. Stanbery. I am never opposed to interruption when it is done in a proper manner.

Gentlemen, to resume, the question was whether this man, Jim Williams, had made threats. Now mark it, gentlemen, it does not stand simply upon the testimony of the first witness; it is not confined to that talk with that farmer, but seven or eight other witnesses testify to the same threats—five white and four black—and one of them swore that Williams himself admitted to him that the threats which he had been charged with making he had made, and then said to him, "I was in Sherman's army, and learned how to carry on war; I am a Captain now, and understand how to carry on war, and I have got the authority from Governor Scott to carry on war. Gentlemen, such a man as that living in that neighborhood! Now, assume that he was a white man opposed to you in politics, your enemy, armed, with a company of white men at his back under his influence, threatening you with burning, threatening you that he would take your family, from the cradle up, lay waste your property, would you feel quite easy, gentlemen? Would you consider that man a safe neighbor? One of two things you would do—more yourself from his neighborhood, or lay plans against him and join a party to carry them out, even at the risk of your life. Why, if it were a single individual that was making these threats, and had no power

to support him, you might perhaps go to some justice of the peace and sue out some warrant, and have him bound over to keep the peace; but when he is backed up by a formidable force, and is the Captain of that force, what could you do with so many disciplined soldiers, each one subject to his orders and willing to obey him?

Now, gentlemen, whether he intended to carry them out or not is not the question. Did the people believe he intended to carry them out? Did it alarm the country?

What is the evidence? What is the evidence of those who did not hear threats from Williams? At midnight, the whole horizon lit up at times with incendiary fires. Ah, says the gentleman, but not until after the Ku Klux had begun their operations. These peaceable citizens in York county, where there has been no Ku Kluxing, are to be held responsible for the Ku Kluxing up in the northeast part of the county. Are the people about Yorkville, and down in that part of the county where Williams lives—a broad belt extending through from Yorkville, fourteen miles broad and ten miles long, where there had been no Ku Kluxing—are those peaceable men, with their wives and children, to be held responsible for these Ku Klux? Is it any excuse to him, because he is raided on by others, that he should go and kill white men in that part of the county which is quiet; not that he should retaliate upon those Ku Klux and their wives and children, but upon the wives and children of men who never had done him any injury, but were living in peace?

Now, consider what manner of man he was. Their own witnesses say he was a good boy. He had a very bad way of showing it. Dogood boys make threats like these? Is that evidence of being a good boy in that neighborhood? I don't know; this man may have been a very good boy until he got these muskets, but he was a very bad boy afterwards. His were the last hands into which such a dangerous arm as this should have been put. He was an intemperate man, and a dangerous man. I have not heard lately of one more dangerous. He was not a drinking man or a thieving man. I guess he was all right upon these points, but I tell you the man was wrong; he was dangerous; dangerous, first, because he was not a mere drunkard or idler; he was serious in what he was about. What idea had the man got in his mind? That he had a mission to fulfill; that he was the champion of his race, that he was the man that was to lead the black man; not out of bondage, of actual bondage, but out of the bondage in which he was in the exercise of his rights as a voter and a freeman. He was to vindicate his race; he was to protect them from injury. How? Why? Under what circumstances? How was it to be done? In his mind it was to be done by force. He, therefore, had himself appointed a captain of the militia company. Then he had them drilled again and again at night; accustomed them to the use of arms. Then he provided ammunition for them. He was doing all this and at the same time was saying, "I am authorized to make war and I am ready to go into it; come out, if you want a fight, here, in this old field—race against race. I challenge you to battle; and if I conquer, you take care for your wives and children and your property." This was the sort of man he was. Gentlemen, there were other companies in that county of York; there were two others, equally large and equally well armed. What is done? The fright, the danger, into which these people fell had been heard, it seems, somewhere here at the head of the government. Persons were sent there authorized to receive these arms; and the arms of the company at Yorkville and the other, both near these Ku Klux operations, were surrendered. Not one of them afterwards molested! They lived there after their arms were given up, in peace and quietness. Who did not surrender his arms? The man who was at the safest and farthest distance from the Ku Klux—Jim Williams. You listened to the testimony of that witness, gentlemen, who said that he saw Williams coming up the road with two or three men of his own color. He says they were quarrelling, and the men turned up a road that forked near his house, but Williams came as to the house, and he said: "Jim, what is the difficulty?" "Why," he says, "they want to give up these arms, but I won't, and we quarrelled."

Now, consider the condition of the people then. Imagine yourselves the white men, and of opposite politics, with a wife and children unprotected in your house, without any organization to protect you, and a man with a character and determination like Williams

had threatened that if any outrage was committed upon him and his people, he would lay the whole country waste; that you would see a mighty work done, and that the fire that you had had would be nothing to such as would take place, and that he would lay the country waste and kill from the cradle up. Gentlemen, if I had lived there, in the vicinity of Yorkville, on a plantation, with my wife and my children, and such a devil as that was in the country—a man that would make such threats, and with a hundred armed men under his influence obeying his word of command; if there had been such a man in my neighborhood, I would have joined the first squad that came along to go and disarm them. I would have taken the consequences; I would rather take imprisonment, if necessary, than for one single night allow such a demon as that to be in my neighborhood—and that is what every one of you would do. Why, gentlemen, if you have the same consideration for your wife and children, as I have,—putting yourself aside entirely, could you sit quietly at your fireside, hear such threats, see these fires, feel that the whole atmosphere was full of panic and alarm—could you sit there quietly and do nothing? Why, you would not deserve to have wives and children. No; your first impulse would be to put down such a threatened danger as that, to disarm such a wild beast as that; and to disarm all those that were ready to follow him.

Why, gentlemen, I have no doubt that there were good and true colored men in that company that Jim couldn't get to go with him. I rather think those two or three colored men that quarreled with him would not have gone with him at the word of command. But some of them would, there is no doubt. You know what an influence over the race of colored people such a man will have, exciting their passions—accustomed to obedience as they are—do not you know enough about your own race, gentlemen, to know that it wouldn't do to trust them, that it wouldn't do to allow them to follow such a leader? Are you immaculate? Is there no danger gentlemen? I put it to you as intelligent men of that race, are there no circumstances under which you would be alarmed? Are there not those in your race that you would fear and dread? That you would not leave in your house without your own protection; that you would not dare to trust the life of your wife, or the sanctity of her person with? Are there no such people in your race? Are there not bad men among you, and men who can be influenced by bad leaders. Now have you heard of any one that has quite as bad a record as Jim Williams out of his own mouth and confession?

Let us see what this young man, the defendant, has done. He is a very young man, scarcely past his majority. Look at him. Does he look like a murderer? Does he look like a dangerous man? What kind of a man have they brought you among all these terrible Ku Klux? Why, gentlemen, it is about the weakest case that they could produce before you. If they must have a Ku Klux, let them get a right sort of Ku Klux—a Ku Klux that has injured somebody; get a Ku Klux that was about a bad business when he was engaged upon a raid. Let us try this man by that standard. Why he is a Ku Klux. He belonged to the society; he was sworn in. What did he know about the Ku Klux at the time? Did he understand that it was a crime to go in that organization? Do you suppose Gunthorpe thought he was joining anything bad? Had he any motive other than for protection? Nobody could disclose the secrets of the order until he got in; but he was told it was for protection; and going into that society, gentlemen, could not make a man guilty because he could not know, until after he got in and became advised of the purposes of that organization, that there was any wrong in it. If there was no wrong in Gunthorpe's going in, what wrong was there in this defendant's going in? He knew nothing about these Klans, except that they were Ku Klux, and he supposed, as well as Gunthorpe, that they were organized in self defense.

What did he do? He went to one meeting of these Ku Klux, and to one alone, and it was for the simple purpose of electing officers. No pretence that any one told him that the purposes of the Ku Klux were anything other than the protection of the people, he went on this raid of the 6th of March. Now, gentlemen, was there no provocation for going upon that raid? Was there no reason why there should be a raid that night, and why such an organization as the Ku Klux should go on it? They were going against

armed men and an individual could not go alone; it required an organization to go there and take away those arms. Well, what organization in that country could go that thing except those Ku Klux? They required more people to go with them; they were making Ku Klux that night; what for? To go upon that raid. Now, gentlemen, I have said that the provocation for the people to go there was not absolutely legal, but it was such a duty as no man would shrink from who felt the fears felt in that neighborhood from the danger of leaving those arms in the hands of those men.

He appeared on that Pinckney road, and, with him four other young men, belonging to one family, called the Shearers. These four boys were there, and, I think, one or two others. He said they had on no disguises, and when the party arrived from the Briar Patch, they initiated those four Shearer boys. What did they know about Ku Kluxing? They just took the oath, right there in the road. What was the purpose? Everybody understood it to be the purpose of that meeting—the testimony is abundant from their own witnesses, as well as ours, that the object of that particular raid was, to do what? What is the answer? To disarm Jim Wilson and his colored company; to take away the arms. That was the purpose. Was it to take away his vote, or to punish him for having voted? Did those young men hear any such purpose as that? Did the defendant join or conspire to go with any people there? Not at all. No evidence of it whatever. Did he hear any one say in that crowd, on that night, that they were going to punish Jim Williams for having voted the Republican ticket at the last election? Why, says my friend, the Attorney General, being in that crowd, although he may have gone there for the purpose of disarming Williams, yet he is responsible for anything that is said by any one in that crowd. Why, that is new law to me, Mr. Attorney General, and, besides, it is not good law. With due respect to the Attorney General, the declaration of a party who is a co-conspirator in the furtherance of the conspiracy, is evidence, but not a declaration foreign to the purpose of the conspiracy. I am assuming that the object of this particular conspiracy that night was for the purpose of disarming this man and not to interfere with his vote. I am taking it for granted that the proof is conclusive; but you say that another purpose was mentioned by some one in that cavalcade, though not heard by the defendant. They stopped in a piney field before they reached Jim Williams'. Who stopped there? This is one of the men who stopped. He didn't see Jim Williams that night; he did not go to his cabin that night; he came there, hitched his horse, and sat down quietly on the hill side. The detail of ten men went to Jim Williams'. What did this young man suppose they were going there for? He supposed they were going to get Williams' arms. Gentlemen, there may have been men in that body—leading men there—who had a worse intent against Jim Williams than to get those arms. Gentlemen, I very much fear that there were some men there who secretly intended to take that man's life, and perhaps they had secret appliances with them. That may be, but they took care, gentlemen, to keep that secret from this young man and his companions that night. Why, gentlemen, it is true that this young man was willing to go when it was announced that they were going to take Williams' arms; and there was a strong excuse for his going. Suppose these men had said: Now we are not going to take Williams' arms away, we are going to take his life away; here are the appliances, we are going to use these ropes. Would this young man have gone with them? At least, gentlemen, can you find that he would have gone when he has had no opportunity to speak for himself? But this young man supposed he was going for what he considered a proper purpose, and what I would consider a proper purpose if I had lived in that neighborhood. How in God's name, gentlemen, can you make him responsible for the horrid outrage that followed. Why, gentlemen, did not the men that were detailed to go down there and seize the man, suppose they were going for his arms? They were absent about an hour or less than an hour, and when they returned they were silent; the question was: Have you got the arms? No response whatever, but some showed guns; in a little while Dr. Bratton, in answer to a question put to him by some man where Williams was, said he is now in hell. Gentlemen, I do not stand here to justify Dr. Bratton, but to defend this young man; let Dr. Bratton answer for himself, and do not hold this young

man guilty on account of his misdeeds. I do not justify that horrid outrage that was committed there that night. It makes my blood run cold to listen to the relation of it; after they had got his guns to take him out from his family, and without a moment's time to make his peace with God, to launch him into the other world, and upon their return to speak of it in the impious manner, which has been detailed!

Gentlemen, the right man is not here, you have the proof, but not the offender. When he or they, whoever they may be, shall be arraigned, then will be the time to mete out the just measurement of such a crime; but, gentlemen, I beg of you not to confound the just with the guilty. I pray you, gentlemen, do not allow your feelings to run away with your judgment, but deal fairly with this man, now before you; measure out justice to him. If he is not found guilty of these offenses, gentlemen, acquit him, and you will do honor to yourselves and give a guaranty to the community that a black man knows how to acquit as well as white men, and hold in even poise the scales of justice. But, gentlemen, if you must always have a victim; if, when the right men do not appear, you can get any man with a white face and punish him, vicariously, I do not want to see one of your race on a jury again.

## SIXTEENTH DAY'S PROCEEDINGS, DECEMBER 18.

The Court met pursuant to adjournment. Hon. Hugh L. Bond, presiding. Hon. George S. Bryan, Associate Judge.

### ARGUMENT OF HON. REVERDY JOHNSON.

Gentlemen of the jury, more than a day having elapsed since you were addressed by the Attorney General, and by my colleague, it is possible, notwithstanding the close attention you gave to each, that your minds at this time, may not distinctly recollect the points which the case involves. I propose to set them before you, before considering the evidence which has been offered on either side, to support the charges in this indictment, or to disprove them. But there are some general considerations with which I hope you will indulge me, which seem to me to be not wholly if at all inappropriate to the occasion. Like my colleague, this is the first time that I have been called upon to address a jury, composed in part, of our colored brethren. But I beg you to be assured, and I know when I give you that assurance, that you and the court will believe me to be sincere, that on that account I entertain and apprehend no prejudice which can in any way effect your verdict. I have no prejudice, I know, and I believe that your good sense and your native intelligence and your desire to be right will not permit you to indulge in any prejudice against the race to which I belong. We are all children of the same Father. In the dispensation of His power and for the purpose of effecting some object of His own, He has given to some of us one complexion and to others a different one; but from the first, when I was able to think upon such a matter, down to the present time, I never doubted that He endowed us all with the same faculties, gave us the same feelings, implanted in our bosoms the same instincts, and above all, intended that we should be alike the servants of our Great Creator. Nor do I apprehend any danger to the prisoner at the bar from the fact, if it be a fact, that some of you have not been educated. If it is so, it was owing to no fault of your own; if it is so, it was your misfortune, and, as I believe, the misfortune of the country. In my view, and in that I follow out the precepts of our fathers, and I think, the teachings of our religion, you are entitled by nature and by nature's God to all the rights which the white man claims himself to be entitled to. One of the objects of our common

creation was happiness; but this world is more or less, under every circumstance, a world of trouble, and in order that we should all be happy, it was necessary that we should have some rights, without which, the possession of happiness could not be obtained. Ignorance, gross ignorance, may comfort itself with the assurance that it enjoys something of happiness whilst it may remain in a state of slavery. The mere comforts of the physical man may be his; the love of his family and of his children may fill his bosom as it does the bosom of the more intelligent and enlightened, but in a true and comprehensive sense, happiness is not his lot. Nothing is more true than what has been said that "the hour which makes man a slave takes half his worth away." The author might have gone further and have said that it not only takes half, but all, his worth away as a man; and the moment he becomes a slave, happiness, in the true and general acceptance of the term, in the sense in which the term was used, is not to be achieved. And our fathers therefore said in that declaration which was born never to die, that man, by nature, is endowed with certain inalienable rights, amongst which are the rights of life and liberty. They placed the latter upon the same ground as the former; they seemed to have believed, and they believed correctly, that without liberty life itself is not worth the having. In the words of Cowper, "it is liberty alone which gives the flower a fleeting life its lost perfume, and we are weeds without it."

Gentlemen of the jury, white and colored, what I have thus said I have spoken from my heart, and have spoken it from my head. Slavery in my view, has been the vice of the age. I thank God that it was not inflicted upon us by our own conduct; it was fastened upon us by that mother country from whom we withdrew on the 4th of July, 1776, but it has continued until of late, continued more or less from necessity. How it was to be extinguished, what would be the consequences of its abolition upon the material wealth and safety of the people, were problems about which honest difference of opinion prevailed. Our fathers so thought when they drafted the Constitution of the United States by which they provided, as you will remember, that the importation of slaves—not in so many words, but in terms which necessarily include them, shall not be prohibited until 1808, a period of twenty years. But fortunately for the land, the march of civilization, the progress of humanity, the teachings of the gospel, in England as well as here, had led almost the universal world to believe that such an institution is not only wrong and inhumane, but by the dispensation of God in relation to all wrongs and actions of humanity furnishes its own remedy and cure.

The war, as you know, occurred in 1861. South Carolina fired the first gun in that conflict, which resulted in the deaths of hundreds and thousands of men on either side, in our entire country. When I say that she fired the first gun, you must not understand me as imputing that she did what she thought she had no right to do. She believed the large mass at least of her statesmen and people believed, that by the constitution of the United States, there was not only no prohibition upon any State to remove from the Union, but almost from the very nature of the Government a direct confession of the right.

Many of the best men throughout the land, with out reference to a political party, entertained the same opinion. She did then in the commencement of that conflict, what she believed she had a right to do. I think she was wrong, and as it turned out for her interest, fatally wrong, at least for a time



But from the first to the present hour, I have never doubted that however true it might have been, that though there were some few who were animated by ambitious aspirations, the large mass of the intelligence of the South came to the same conclusion and armed for the conflict honestly. But the war ended, as you know, and ended so as forever to put an end to what I think was an erroneous construction of the Constitution. The war ended, and these gallant men, who had almost surpassed the valor of their forefathers, as exhibited during the Revolution, are satisfied with the judgment of the God of battles. They submitted to the result. They are now citizens, with yourselves, of the common country, bound up with its destinies, and as willing and as anxious to maintain its honor unharmed, and to promote its prosperity as any class of men to be found in any part of our extensive domain.

You, gentlemen of the jury, who were once slaves, as I suppose some of you were, need not apprehend any return to that condition. There has not only been no manifestation of a desire to reduce you or your race again to slavery, but my word for it from my knowledge of the white men of the South, the attempt would be resisted at all hazards. And not only would you find resistance of such power and magnitude as to defy all such efforts, but the opinion of *mankind* would reprove such an effort in terms from which those who should be mad enough to make the effort, would shrink back with shame and horror. Slavery then, is gone, and I thank God for it. I speak it now in South Carolina, and in the presence of those who, perhaps, at one time thought it a divine institution. Slavery is now at an end, and while I thank God for it, I trust in the mercy of heaven that it will never be permitted to settle any where in any part of the civilized world; but, gentlemen of the jury, there is one other topic, in relation to which I beg leave to make a few remarks. Mr. Attorney General, in his speech in opening this case for the prosecution, asked over and over again, "Where are the gentlemen who are parties to this conspiracy? He said that *echo* answered, where? "Why is it that counsel from a distance have been brought to defend this conspiracy? Why," says the Attorney General, "they are here in their professional capacity; they are not knights errant." Well, as far as I am concerned, I am too old to be a knight errant; but my friend, the Attorney General, will permit me to ask in relation to such—although it was not intended to be an insinuation—to such an insinuation, what brings him here? As the Attorney General of the State it is not part of his duty to conduct this prosecution; the *sphere* of his obligation is South Carolina—South Carolina laws and South Carolina jurisdiction. If outrages, more or less abominable, have been perpetrated, it was the business of Mr. Attorney General to see that they were properly prosecuted by the State courts. As Attorney General of the State he has no official right to be here. He is here, then, under the operation of some retainer. He is no knight errant more than we are; and from my knowledge, derived from a short acquaintance with him, I do not think he has any particular desire to play knight errant. My colleague and myself, then, are in the same condition in which he is placed; he is discharging a professional duty, and so are we; and as we shall respectively discharge it, we will be entitled to credit, or not. That he is entitled to credit, nobody more willingly acknowledges than I do. I have listened to his efforts during the progress of this trial, and to his argument before you on Saturday, with unmixed delight, and I saw in it

throughout the evidence of coming eminence because of existing ability. I believe if he pursues the profession as he has commenced it, it will place him—if he is not already placed—at the very head of the profession which even now he adorns.

But Mr. Attorney General has remarked, and would have you suppose that my friend and myself are here to defend, to justify or to palliate the outrages that may have been perpetrated in your State by this association of Ku Klux. He makes a great mistake as to both of us. I have listened with unmixed horror to some of the testimony which has been brought before you. The outrages proved as shocking to humanity, they admit of neither excuse or justification, they violate every obligation which law and nature imposes upon men, they show that the parties engaged were crutes insensible to the obligations of humanity and religion. The day will come, however, if it has not already arrived, when they will deeply lament it. Even if justice shall not overtake them, there is one tribunal from which there is no escape. It is their own judgment, that tribunal which sits in the breast of every living man—that small, still voice that thrills through the heart—the soul of the mind, and as it speaks, gives happiness or torture—the voice of conscience, the voice of God. If it has not already spoken to them in tones which have startled them to the enormity of their conduct, I trust in the mercy of Heaven that that voice will speak before they shall be called above to account for the transactions of this world. That it will so speak as to make them penitent, and that trusting in the dispensations of Heaven, whose justice is dispensed with mercy, when they shall be brought before the bar of their great Tribunal, so to speak, that incomprehensible Tribunal there will be found in the fact of their penitence, or in their previous lives, some grounds upon which God may say PARDON.

Gentlemen, you are not therefore to be prejudiced against my friend and myself because we are here, and because we have engaged in the defence of the man on trial. Be assured that if I believed he was the murderer of Williams, he would find no defender in me, but we are both heard for a different purpose. We believed, and from the course of the studies in which we have been brought up, we might be excused for believing that we understand the political institutions of our country, and with that understanding we both came to the conclusion that the two laws of 1870 and 1871, under which these proceedings in your State had been going on for some time, were unconstitutional and violative, not only of the rights of your State, but of every State in the Union, as well as the rights of the individual citizen. We came, therefore, to see if that question, or some one question arising under those laws could not be transmitted to the Supreme Court of the United States, whose judgment would fix in these respects the true construction of the Constitution. We have succeeded in part, you have heard I suppose gentlemen, and understood, during the progress of this trial, that the only way in which a criminal case can be brought before the Supreme Court of the United States, is because the tribunal before which such a case originally comes, divide in opinion upon some such question. They have divided, they have announced that division already.

There are here now two questions before you, upon which their ultimate decision has not been pronounced. They may divide upon them, and they also can be carried to the Supreme Court of the United States; but whether they go or not, there is *one* to go there, and I hope when the time comes

for the discussion of that question in that tribunal, I shall have the happiness to meet the learned District Attorney and my friend, the Attorney General, if so long an absence from his official duties will permit him to be there. Then we will see who was right and who was wrong.

Now, gentlemen, with these remarks, which, as I told you, I thought were not inappropriate to the condition in which I stand, let me proceed first to state what are the points involved in this indictment. It originally had three counts, as the lawyers term it; that is, three separate and independent charges of crime or misdemeanors, neither dependant upon the other, each separate and distinct. What were they? The first was conspiracy, by intimidation and other illegal means, to prevent colored men from exercising the right of suffrage, in October, 1872. The second was for conspiracy to deny to James Williams the right to bear arms. The Court (that question having been before them in an antecedent case, the moment that particular count was stated by the District Attorney), said, "we cannot try that under this law as yet." "But," said the District Attorney, in a moment almost of professional enthusiasm, he abandoned what he had said more than once, was the very thing he wanted to try. He seemed ever to treat, although I am sure he did not so design, the suggestion of the court with disrespect by proclaiming in the face of the court "I will tear the indictment to pieces." We had done that for him in a great measure. And his mode of tearing the indictment in pieces was to say that they did not propose to risk the part which formed the offense, contained in the second count. I do not know, from what appears to my colleague and myself, that he has not some lingering hope that he may induce you to convict, not on any charge contained in this count, but because you may be induced to believe that the charges contained in the other two counts are more or less proved by the charge contained in the second count. If he shall state that in his speech, gentlemen, there is the corrector [pointing to the court], and the correction will be sure to be administered. I think then the third count is not for conspiring to prevent poor Williams from exercising the right of suffrage in October, 1872, but to punish him for having exercised the right in 1870, or some antecedent period. There was no antecedent period at which he could have voted, except October, 1870, and the charge therefore is that these men went to his house for the purpose of punishing him, frightening him, not with a view to prevent his voting in 1872, but to punish him for having voted in 1870. And when do they say that they went there for that purpose? On the 6th of March, 1871, several months afterwards.

Now, as you will see, gentlemen, each of the two counts that remain—the only two counts which can be submitted to you—the only two counts upon which you have a right to consider the evidence as applying here—are the first, which denounces him for entering into a conspiracy to prevent voting by his race in October, 1871; and the other for conspiring to punish Williams as a voter, for voting at the antecedent election of 1870.

I will proceed to consider those two counts in their order, gentlemen; and if I shall weary you, I beg you not to hesitate to let me know it. I will endeavor, however, not to do so. The conspiracy, then, in this count is a conspiracy against the elective franchise. The particular exercise of the elective franchise against which the conspiracy is alleged to have been made was the franchise to be exercised in October, 1872. Is there any evidence of that, gentlemen? Mr. Attorney General said that there were two modes of establishing a conspiracy—one, the written evidence, exhibiting the object and scope of the conspiracy; the other, acts in furtherance of the conspiracy. Let me take the last

first. What is the written proof—the written proof upon which the prosecution relies? Some of the witnesses say that, as far back as '68, a conspiracy was formed, with the view of defeating or hindering the exercise of the franchise by the colored race and that portion of the white race who, in the judgment of the prosecution, seemed to be entitled to a special honor because they belonged to the Radical party in 1868. Who proves it? One or two witnesses say that they understood the association to be a political one. One, only one, man swears that he understood that the political object of the association was to be accomplished by killing white Radicals and whipping the black. Who is he?

A Mr. Gunn! Nobody else. Not another witness who has been examined on either side states that. Some of them say that they believed it to be political; they believed the object was to put down the Radical party, and as a consequence to elect the Democratic party. But Gunn stands alone in swearing that it was to be achieved by the assassination of the white Radicals, and the merciless whipping of the blacks generally. If reasonable conclusions can be drawn from evidence, there is not one word of truth in his statement. Why did he become a member of the order? What did he do? He went upon one or two raids. There is the man who, from a mere sense of duty, divulged the secrets of a conspiracy of which he was a member, and in the execution of which he joined in raids—tells you that he knew when he joined it, that the object was to assassinate the whites and to lacerate the blacks, and yet, he continued to be an honored member, went upon raids with the full knowledge, that the design of the conspiracy was what he states; participated in the efforts to carry out that design, and when upon the stand didn't blush to tell you that it was not until some months afterwards that he woke up to the obligation, which as a citizen of the United States, he was under to inform the authorities.

Mr. Corbin, I notice the distinguished counsel is misrepresenting the testimony. Mr. Gunn did not go on any raids.

Mr. Johnson. Well my recollection was otherwise; but I will assume now that the counsel is more correct than I am, because he had not only the evidence given on the stand, but he had it in advance, all written out.

Mr. Corbin. That is a mistake again.

Mr. Johnson. Well, I don't know; if somebody didn't write it out then you had a paper before you, that there was nothing written upon, that is all. But, if anybody wrote it, and it there was no paper before you in writing, there was at your elbow one who could tell you everything. I don't mean the Attorney General; I mean the gentleman who has figured so much in carrying out the purposes of his command; who has ordered seizures to be made in the night. I am not blaming him if he was acting under orders. He has had the witnesses more or less in his own camp; probing them to the bottom, and has been acting throughout this trial, quasi, as legal adviser, which I suppose he is; if he is not, perhaps he thinks himself admirably qualified to be. Don't understand me, gentlemen of the jury, as accusing intentionally the gallant Major with any wrong; but I think—it will not be considered improper in me to say—that the General-in-Chief of the Army of the United States has said more than once, that I think an officer of the United States might be better employed. So said Sherman; so say I, and so I think, when the history of the times is written, will say posterity. What does this innocent and fair man, who has become awakened up to the enormity of the conspiracy, of which, until then, he had been a willing member, whether he raided or not? He goes to Georgia, attends meetings of this association, pretends to be one of them, conceals the fact that he had then, or on any day thereafter, intended to disclose the secrets which he imagined were in his own bosom; deceives his confederates, plays false to his co-conspirators. He had taken the oath not to divulge. Well, what does he do? He learns that Mr. Akerman, lately Attorney General of the United States, is not now—some sixty miles off, in Georgia. It would be a pretty good thing in him if he took the railroad and made himself known to Mr. Akerman. So he did. He found the Attorney General; he told the Attorney General, as he says substantially what he has testified here. But it was pure patriotism; he did not look to profit; his anti-

mating principle was justice; he was inspired with the love of breaking up an association dangerous to the community, of which he all along had been a member. And having unbosomed himself to Mr. Akerman, he wended his way back without a dollar; paid his own expenses to and from the village where he found Mr. Akerman; and after he returned,—about two or three weeks antecedent to this trial,—his curiosity became aroused; he likes to see handsome things, and it induced him to go to Washington, a city that he had never seen; curiosity and his love of the arts carried him there; he wanted to see the city of Washington, the capital of our country, its great buildings, its beautiful squares; to partake, I suppose, of its refined society; and he visited Washington. What did he do when he got there? Why, he couldn't see well without stepping into the Attorney General's office; almost the first thing that he did was to go into the Attorney General's office. For what? He had told the Attorney General, he says, all that he knew at the interview he had with him in Georgia. What did he go there again for just before these trials commenced? Merely for the pleasure of looking at Mr. Akerman? Why, there may be a pleasure in that! I don't know! He is quite a good looking man; but didn't he go for some other purpose? What was that purpose? It was to get the reward either directly promised before or which he knew would then be promised if he came here and put himself upon the stand as a witness. Is not the proof conclusive? What did Akerman listen to him for? The duties of this office under all circumstances are overwhelming. Why did he give this man, whom he had only seen once, an interview in relation to these trials? Can any body answer? Didn't he promise to Akerman, in Georgia, that he might be relied upon by his evidence to support these prosecutions? He says no, oh, no, I had no such design; I visited Washington for no other purpose. Than what followed? Akerman goes to him or he goes to Akerman, it is immaterial which; and making his way through the adjoining room, in order to leave the office of the Attorney General, the Clerk of the Attorney General says to him "here are two hundred dollars for you." What was the Clerk going to do with two hundred dollars there? That is not a very safe place from all accounts, to leave two hundred dollars on the desk, unless it is to be at once used. What occasion had the Attorney General or his Clerk for \$200 that morning at that time? Why did the clerk arrest him as he was coming through the room, and tell him here are \$200 for you? Why did he count it out? Why did he make him give a receipt for the money? It was because the money was paid in the execution of a promise that he should be paid. My friend, the Attorney General, told you that if we could only prove that such a promise was made antecedent to his disclosure it would go very far, if not entirely, to destroy his evidence. Why, isn't it proved, gentlemen, by the circumstances? You do not expect that man to prove it, and they have not examined Mr. Akerman to disprove it; but just about this time he would be at leisure. Not a word from Akerman or anybody else, but this man suddenly and unexpectedly receives from one of the officers of the Attorney General two hundred dollars, and then he has the assurance from the stand to tell you in answer to the questions propounded to him by my colleague what it was given to him for. Do you believe that he conjectured when he was pushed by the examination that it may have been paid to him to pay the expenses which he had incurred in visiting Mr. Akerman in Georgia, a distance of sixty miles, the fare for which, I suppose, would have been five or six dollars, perhaps the same to return—ten or twelve dollars in all. What a generous man Mr. Akerman is with the public money! If he had given his own money to a friend who was poor and unable to have borne the expense, it would have been a different thing; but he pays him out of the public purse. What right had he to do that? He paid him out of the public purse, for his services, which, as he imagines, were rendered the public; for if not, he himself would be a defaulter to the amount of \$200. Why did he take

a receipt? It was to show, after the money was paid, that he might not be called upon to explain. There was apparently nothing in the department, in the office to show that there was any debt due from the Government to Gunn; yet there was evidence in the breast of Akerman, and from the very nature of the prosecution, that it was paid for services rendered and services to be rendered, and he comes here with the two hundred dollars in his pockets, if he has not spent it, and he is the only witness who swears that the purpose of the conspiracy was to murder the whites and lacerate the backs of the colored people. Gentlemen, there is not a word of truth in it. He must be very little acquainted with the ways of men who can put any confidence in such a story. Well, now, what have they proved? They call up a witness, named Hope, one named Caldwell, one named Kirkpatrick, and one named Ferguson, members of the Klan, each one of them initiated on or about the same time, and they each tell you that he considered the purpose of the association—was so informed when he entered into it—was for self-protection. Was there no reason, gentlemen, to suppose that self-protection might prove to be necessary? Why the air had been heated by conflagration after conflagration—arms had been placed whether wisely or unwisely, I don't stop to inquire, in the hands of the colored race, and they were divided into companies; arms of the best kind, arms against which no squirrel gun would be any protection whatever, no pistol; arms, which in the hands of skillful men, and they could soon become skillful, would kill almost at a thousand yards. Threats filled the air, an association had been formed not peculiar to South Carolina, but to the whole country more or less, called the Union League, a secret association. It is not for me to say, that it was not an honest and patriotic association, I consider; but still a secret association: And all these things combined filled the minds of men and women with the thought that it would be as well that they should guard themselves against what might result from that state of things. No black man's house to be burned, no attempt to burn any, the conflagration extending far and wide, night after night, so that each poor lady as she laid down in her bed at night, had reason to fear that she might wake and find her house in flames. What is the husband to do, what is the brother to do, what is the son to do? Bind themselves together as a defense against any such threats as were apprehended; and these four men tell you that as far as they knew anything about it, that was the whole extent of the conspiracy. Don't they tell the truth; do not the District Attorney and the Attorney General, believe that they tell the truth? If they do not, why did they bring them here as witnesses? Something they have proved upon which they rely, but when they ask you to put confidence in their statement—part of the statement—they at the same time deny that they possessed any title to confidence in relation to the whole statement. You have it, therefore, from four of the prosecuting witnesses, that the sole purpose of the association was self defense; and you, gentlemen, would have been parties to such a conspiracy. Suppose the whites had been burning the houses of the blacks; suppose the whites had been threatening the women and the children of the black race, would anybody blame the blacks for combining to guard against such a catastrophe? Why, certainly not. Self defense is a law of nature, written as a duty on the heart of every man as he comes from the hand of his Creator. For self defense, therefore—for preparation for self defense upon the part of the blacks who apprehended a conspiracy upon the part of the whites to do what the whites supposed was the conspiracy upon the part of the blacks, and was then acting on the defense in the name of justice and equality, was the combining together of the whites a crime?

Well now, gentlemen, this young man joined in 1871—the young man now upon trial—joined the association in January, 1871. Is there any proof that any body told him what the object of the conspiracy was in relation to the blacks? Not a word—not a word! He never was at bat

one meeting of their association, and upon this raid. And what did he suppose was the object of that raid? Why, look at the witnesses upon the part of the Government. Gentlemen, I cannot state all their names—they told you that the object of the raid of the 6th of March, was to obtain guns, said to be in the hands of black men. Was that the object? If it was, it was not the object stated in either of those counts; if that was the design, as far as this indictment is concerned, it was an innocent design. Wasn't that the object? I think there are nine men who have been examined—their names I have forgotten—

Mr. Stanbery.—[reading.] Lindsay, Long, Lowry, Fudge, Hinson, O'Connell, Bratton, and—

Mr. Johnson, continuing. There are nine—four colored and five white—they tell you that as far as they knew, and they went upon the raid, the purpose was to get these arms. Now suppose it was.

Mr. Corbin interrupting. None of these parties were upon the raid.

Mr. Johnson. Some did go on the raid; however, I don't know that they all went. They speak—

Mr. Stanbery interrupting. Their witnesses went on the raid.

Mr. Johnson. Their witnesses went on the raid. Now, gentlemen, what was done? As far as this young man is concerned he went; he was ordered to dismount, stand with the horses, said several of the witnesses examined on the part of the government against him. There is no charge from them, as far as they have stated anything about it, except to procure arms; he remained with the horses. On their way there they tried to get guns, on their way back they tried to get guns; they got guns, and at Williams' house, and there is not a particle of evidence even calculated to make you suspect that this young man entertained any other impression than that the object of the raid on that night was to get the guns from the hands of the blacks. Now that may or may not be our offense, but that is not the offense charged; that may or may not have been justifiable; but that is not your inquiry. They have abandoned that charge.

But the fact of making the charge, I beg you to bear in mind, the fact of making the charge, that this man, on that night, entered into the conspiracy to obtain arms, is evidence to show you that in the judgment of the prosecutor that was the object; they wanted a double chance of convicting the young man; if they failed in convicting him on the first count, and failed in convicting him on the third count, they supposed, upon producing evidence that the purpose of the raid was to procure arms, they would be able to convict on the second count, but the accusation to be found in the second count; is at war with the accusation to be found in either of the other counts; this second count charges no purpose to interfere with the votes of the black race, charges no purpose to punish anybody with having voted, but is content with accusing the defendant with having, contrary to the act of Congress, or some other law, which they tell us is to be found in the statute book, denied to Williams the right which he had, to bear arms. Now, gentlemen of the jury, suppose these four men, or however many there were, I forget the number whom the Government has examined, who are members of the association, went upon the raid, were now indicted before you for having conspired to defeat the blacks from voting, denying the right secured by the 1st section of the act of 1870, or had been charged with punishing Williams in 1870, would you convict them, supposing their statement to be true? They can tell their story; the prosecutor has placed the defendant in a position in which he cannot be heard in his own defense. What right have you to suppose that he intended anything else than what was intended by the witnesses examined on the part of the Government? If you would not convict them, I do not see, gentlemen, how it is possible for you to convict the accused. He stands in a like condition exactly. They bring up the conspirators; they do not propose to proceed against them; they put them upon the stand and upon their own statement they would have no right, legally, to proceed against him. But they select this poor young man, just arrived at maturity, and ask you to convict him without the least particle of evidence that he knew anything

of the object of that raid, except what was known to each one of the four men the Government is relying upon to convict him, first upon the ground stated by the Attorney General that when a conspiracy is proved to accomplish a particular purpose and brought home to the knowledge of all in the conspiracy, the act of any one in the prosecution in the conspiracy is evidence against the rest. Now I don't know, gentlemen, for I never saw this young man until this trial, and for reasons which you understand I have not been able to see him here, you are asked to convict him because Dr. Bratton, or some others associated with Dr. Bratton, on the night of the 6th of March, perpetrated a foul and disgraceful murder upon poor Williams. You are asked to convict him, because upon some other occasion, upon some other raid, in which the defendant was not concerned, they perpetrated a gross outrage upon another man named Rainey, and upon his wife and his daughter, just as innocent of it as either of you, not to be convicted therefore, except upon the ground that the act of one is the act of all, and if the act of one is the act of all, why, in the name of justice, is it that these prosecutors have not brought before you, those criminals before; men upon whose testimony they are relying for the purpose of securing the conviction of this alleged criminal.

Gentlemen, I'm wearing out my own strength; I have not time nor strength to go through with this proof, and there is but one other consideration, which before closing I will trouble you with. Oh! says the Mr. Attorney General, it was a horrid association; I do not use the language he uses much better than mine, it was a horrible association, its object was to put down the Radical party, not any political principle, that was not the purpose, but to prevent the Radical party from coming into power or remaining in power. Why, that is something new to me, that that should be considered as an offense. I wonder what was the object of the Union League, if that was not to put down the Democratic party? If that was not to guard against their coming into power, I suppose you all know what was the purpose of the League. It was to effect a combination to accomplish a political end—an end which those concerned in the League, had a right to accomplish if they did it by any means that were not criminal or wrong in themselves. But now I suppose the gentlemen, looking at that object which the Attorney General seems to look upon with the species of horror, that by their oath they had bound themselves to do what they could to put down the Radical party.

Now, suppose then, gentlemen, I am imagining cases, or, I am about to imagine a case; suppose you apprehend what might be the result of placing in the hands of the Radical party the Government of South Carolina, suppose you apprehend that one result, and a speedy result, would be to treble or quadruple the expenses of the government, would be to enhance the tax, if not in nominal amount, by enhancing the assessment of the value of the property; suppose you believed—I am not stating that the fact is not so—that the result would be to inaugurate an era of corruption, and that that would be found to pervade every branch of the State Government, Executive and Legislative. Suppose that you believed that a debt of five or six millions would, under Radical management swell into a debt of fifteen or twenty millions of dollars. Suppose you believed that the effect would be to tarnish the fair character of South Carolina, to blight her otherwise pure financial faith, to strike down her credit in the market, do you think it was any offense if such things are conceived as possible—such results were considered as reasonable—if they should bind themselves together to put down the Radical party.

And, gentlemen, when I say the Radical party don't understand me as meaning to impute that there is not in the masses of that party as much honesty as there is

in the masses of the other party. Bad men are to be found in all parties, and in these days corruption fills the air, every branch of the public service, more or less, is marked by it. Every day brings to the public view some startling defalcation; every hour they sink deeper into the faith and honor of South Carolina. Who is South Carolina? Gentlemen, from her politicians in modern times I greatly dissented; but who was South Carolina in former times? Who were the Marlions, and the Fumters, and the Moultries, and the Johnsons? Who with dauntless bravery and matchless skill carried our fathers through the perils of the revolution? South Carolinians! Who were the men who figured most conspicuously in the convention that gave to the world as well as to us the purest form of government ever devised by man under Providence for men's government? The Pinckneys and the Rutleges! Who were those who contributed in the councils of the States to make the name of South Carolina honored throughout the land? The Lowndes and Calhouns! Then under their management South Carolina was one of the most peerless of the States. Now look at her! Her sons and you, gentlemen of the jury, are equally her sons with those of the white race—her sons, all of them, if they do not now, will ere long wish, the government of South Carolina had not fallen into Radical hands.

A word further, and I shall have done. Well, now, the colored race and the white are embarked in the same great experiment. You have the same interest in that experiment that the white race have ever had or can have. You must wish—I am sure you do—that the prosperity and honor of South Carolina may be revived; and, whether you be Radicals or not Radicals, whether you be Democrats or Republicans, I am sure you will see to it that, as far as you can accomplish such an end, you will use your best efforts to redeem South Carolina from the sad plight in which she is now placed.

A word more, and I am through. Look at that young man! Mr. Attorney General could not help using the words that were in his heart, and, saying he was enticed into that conspiracy, he could not help saying to you: "I pity him." He could not help saying to you, gentlemen, he pitied him; he could not help saying that he wished that the men who perpetrated these outrages could be brought to justice. He cannot wish it more than I do—properly brought to justice. But this young man, who, as I understand, went through the perils of the unhappy civil war with manliness and courage, is now the husband of a young wife and the father of a little child. It is not proved that he made any attempt to do anything wrong, but upon him the wrongs done by others are to be visited, in the view of the prosecuting counsel, upon some notion of the law—is to be condemned—and, whatever may be the judgment the court may award, is to suffer that judgment. Can you, gentlemen of the jury, say guilty as to him upon the testimony of men who, by their own confession, are as guilty as he is?

Gentlemen, I am done.

#### ARGUMENT OF THE HON. D. T. CORBIN.

May it please the court and gentlemen of the jury, it is with pleasure that I announce to you the approach of the termination of the trial of this cause. I have no doubt it is a gratification to you and to the court. You, gentlemen, have sat with patience, listening, day after day, to the argument of counsel upon legal questions, about which you are supposed to know nothing. The distinguished counsel on the other side have indulged in the widest latitude in the cross examination of witnesses, and in the introduction of testimony. In fact all the widest range possible of the cause has been permitted, and sufficient time been consumed to tire the patience of us professional gentlemen, who are accustomed to such labor; hence, how far more the patience of laboring men, to which class you belong. But, gentlemen, throughout this trial, what I have said, what I have done, and what I am about to say, I have said and done and am about to say, in the discharge of a high public trust and duty, as the prosecuting officer of the Government of the United States. I take no pleasure in the prosecution of this single individual. I take no pleasure in the prosecution of any criminal, or his sentence, or in his punishment. The Government, which it is my duty and pleasure to serve, is a Government of law. It is a Government that guards with jealous care the rights of its citizens—the

highest cannot escape its power, and the lowest feel its protecting care.

Gentlemen, we have lived over a century in the last ten years. The ballot, which is the symbol of power in this government, has passed into the hands of those who were lately slaves, to be wielded by them in common with the white citizens of the country. The ballot, which has heretofore been, in the eyes of the colored race, the symbol of oppression, has now become to them the symbol of protection and the symbol of power. Not only the symbol, but the power, in fact. The colored race, and I rejoice in it, has been emancipated. Two hundred years of unbroken bondage have been terminated, and the slave who once traveled his lowly round, driven by the lash of a master, now stands forth a freeman, clothed with all the rights of an American citizen. In this case, gentlemen, we have charged, and we have attempted to prove, that these newly acquired rights, this franchise conferred upon the emancipated Africans, has been conspired against; that a terrible conspiracy has been inaugurated not only in this State, but in adjoining States, to rob our colored citizens of African descent of their newly acquired rights—the rights of American citizens.

Gentlemen, I do not wish to indulge, it is not my habit to indulge in general discussions foreign to the issue before the jury. The gentlemen who have preceded me, the distinguished counsel upon the other side, seemed to be addressing themselves during a large portion of this time to somebody else than you—doing something else rather than trying to aid your minds in the solution of the questions before you, namely, the guilt or innocence of this prisoner. Gentlemen, I shall reply to what they have said, that I deem important to reply to, in the progress of the argument.

In the first place, what is the defendant charged with? The first count of the indictment charges that the prisoner with others, unlawfully, did conspire together within intent to violate the first section of the act entitled an act to enforce the rights of the citizens of the United States to vote in the several States of this Union, &c., by unlawfully hindering, preventing and restraining divers male citizens of the United States, of African descent, above the age of twenty-one years, qualified to vote at an election of the people in said district, &c. And by other unlawful means not allowing them to vote at an election to be held in October, 1872.

The questions, then is under this first count. First, did such a conspiracy exist; second, did this prisoner at the bar enter into or become a party to that conspiracy? Both of these are questions of fact, both are to be determined by you from the testimony given you here in court. First, did such a conspiracy exist? Upon that question we shall first present to you the constitution and by laws of the organizations. Second, the testimony of its members, those who wore its gowns, used its signs, carried its pistols, blew its signal whistles and participated in its crimes. Finally, the testimony of the poor creatures who felt its blows, writhed under its scourges, and were made widows and orphans by its murders. First, gentlemen of the jury, the constitution—and you will mark that there is no question, no dispute about its authenticity.

The distinguished counsel on the other side in the conduct of this case have never hinted that this was not the constitution of the Ku Klux Klan; they have never by testimony or argument, attempted to persuade you that this was not a genuine instrument, a plan of organization under which the operations of this infamous order were carried on. What is this gentlemen? What does it propose? The very first principle, the foundation stone upon which it rests, is, "We are on the side of justice, humanity, and constitutional liberty as bequeathed to us in its purity by our forefathers." Gentlemen, what does that mean, "constitutional liberty as bequeathed to us by our forefathers?" Let us dwell for a moment upon it. Our forefathers framed a constitution which the Supreme Court of the United States has declared over and over again, recognized slavery, protected slavery, and that the slave escaping from the State, where he was held to labor, into any other State should not in consequence escape from bondage, but should be delivered up to the person claiming his service. The Supreme Court of the United States have said that this meant that the master might pursue his slave into any State in this Union and return him to bondage. This was the constitution, this the consti-

tutional liberty in reference to the colored man that was handed down to us by our forefathers. That constitution, the Supreme Court of the United States said, meant this, that the black man had no rights that the white man was bound to respect.

M. Johnson. They never said any such thing, I beg your pardon.

Mr. Corbin. My distinguished friend may look in the eighteenth Howard, in the Dred Scott case.

Mr. Johnson. The Judge that pronounced that decision, is dead. If you will look into that decision you will find that so far from stating what the council says, was stated, it was said that there was a time when a black man was supposed to have no rights which a white man need respect.

Mr. Corbin. But that was the ancient constitution, the court said that that view obtained.

Mr. Johnson. He didn't say any such thing. If there is any doubt of it gentlemen, we can produce the books; the highest court in this country used no such language. The authority they relied upon was the legislation of the State, not the legislation of Congress. He cited for the purpose of showing the slavery in the colonies, and separate States. Connecticut, Massachusetts and two or three Northern States, for the purpose of showing that slaves, or blacks were treated as if they had no rights that ought to be respected, though he regretted it. He is dead now, and it is due to him that he should be vindicated from what seemed to be outrageous misrepresentation of his judgements and declarations.

Mr. Corbin. Gentlemen, the book is there and the decision is there; it is to be read of all men; and I am not the only one in this country, but one of millions, who look upon that decision as a stain upon the records of the Supreme Court of the United States; but it was a decision of the Supreme Court of the United States, and as such, gave interpretation to the country. But, gentlemen, there is no doubt about this, that this article of the Constitution protecting African Slavery was in the Constitution as handed down to us by our forefathers, and that is what is meant in this first section of the Ku Klux constitution. It meant more; it meant that we stand by the Constitution in that respect *as it was*, not as *it is now*—not with the 13th, 14th and 15th Amendments in it. It means we reject the results of the late war. We trample upon these amendments of the Constitution, and we intend to destroy and defeat them. That is what this Ku Klux oath meant, and the distinguished counsel on the other side cannot remove it by any argument. Now what do they mean when they say constitutional liberty in its original purity? The 13th Amendment of the Constitution abolishes slavery, and the 14th Amendment protects the newly enfranchised citizen in his right of property, and the 15th Amendment protects him in the elective franchise. They said we trampled upon all that. We stand by constitutional liberty as it was given to us in its purity by our forefathers.

Let us examine the next principle of this Ku Klux instrument. "We oppose and reject the principles of the Radical party." Not the Radical party, but its principles.

Gentlemen, this is but a carolery to the first plank cited. What are the principles of the Radical party? What are intended? What have we to infer from the first article of this infamous instrument? We oppose and reject what principles? Why, gentlemen, if any principle of the Radical party has been prominent—if that party has discussed anything during the past five years and has accomplished anything—if it has made a record which shall be carried down through

the distant ages, it has made prominent, discussed, accomplished and recorded, for all time, the thirteenth, fourteenth and fifteenth Amendments to the Constitution. These are the principles of the Radical party, and they have been the chief objects and results of its labors for the last ten years. Other things have been talked about, but these have been the foundation stones upon which the Radical party was built; and I say to you gentlemen, that when it accomplished the thirteenth, fourteenth and fifteenth Amendments, it had done, I had almost said, more than was done in the early Revolution in this country, and which severed the connection of this country from the Mother Country. These amendments will live when the names of parties are forgotten, but if names are remembered at all, they will be remembered as principles settled by the Radical, or Republican party of 1866, 1867, 1868, 1869, and 1870.

But this organization proposes to defeat, put down, and destroy these principles of the Radical party. Gentlemen, this organization which has this instrument for an exposition of its principles, is for the purpose of destroying the principles of the Radical party, and the constitution as it now is. Is there anything to lead you to believe their argument to be untrue? Read that paper for yourselves. Why have not the distinguished counsel on the other side told what it means; why have they not explained that instrument? They could not do it, they had the opportunity day after day, and hour after hour, to tell what it meant. They have heard it read, and it is in proof in the cause you have heard the witnesses, and heard, as one after another has come upon the stand, that he took that Ku Klux obligation first in 1868, and then from time to time, up to last January.

Mr. Johnson. We did not know the construction put upon it by you.

Mr. Corbin. As the counsel says, we have not called their attention to it? What did we put it in the case for? It is the foundation stone, and the bottom of this organization. Now, gentlemen, how does the Ku Klux Klan, the clients of my distinguished friends on the other side, propose to accomplish the object set out in this first article of their constitution. This constitution and by-laws shall answer. "Each member shall provide himself with a Ku Klux gown, each member shall provide himself with a pistol, and each member shall provide himself with a signal instrument." A pistol, a Ku Klux gown and a signal instrument. These are the means. This is the way it proposes to carry out its principles. They propose to assault the rights of the colored voters in this country. They propose to do it in disguise, with pistols, and silence the human voice and direct all operations by the sound of a signal instrument, this is the way this organization works. It is speaking for itself, carrying out its full purposes.

But they may say, how do you know the organization is aimed at the colored men? The by-laws says "no person of color shall be a member of this order." Why? They propose to assail the colored people, and could not do it if persons of color were permitted within the organization. Is there any doubt about this? The first and second principles announced in the oath; the means by which the purposes were to be carried into effect, and this fact, namely, that no person of color shall be a member of the organization, establishes the character beyond controversy. This fell device, this foul design, points to the dark deeds of the Ku Klux Klan. Gentlemen, in my judgment, we might stop here and ask for the verdict of guilty against this defendant. Look at the paper itself, read and interpret it. It alone fixes the seal of guilt upon every member of this order, because, gentlemen, remember that a conspiracy does not consist in carrying out the objects of the conspiracy; it does not consist in killing Jim Williams; it does not consist in breaking down the houses, and in flogging thousands of men and women in York County—that is not the

conspiracy—but the conspiracy is in the agreement, concerted purpose, the united purpose. But, gentlemen, we propose to go farther, and not only to read you the agreement—not only to present to you the constitution of the conspirators, which the Court will interpret to you, but to show you how this Ku Klux Klan carried on its fell purposes. We will show you this, that the organization, the constitution and the by-laws, the acts of the members, the voice of these midnight raiders, all agree and harmonize together; and, gentlemen, having shown you this, we shall ask you to pass your judgment upon the conspiracy.

Gentlemen of the jury, my assistant, the Attorney General, has done me the kindness to get the book to which I alluded in the early part of this argument. It is 19 Howard, page 407, and contains the decision of the Supreme Court of the United States, and inasmuch as the distinguished counsel on the other side chose to contradict me most emphatically, I now propose to read in your hearing what the Supreme Court said in that case.

Mr. Corbin here read from 19 Howard the passage, from Chief Justice Taney's decision, that the black man had no rights which the white man was bound to respect.

This, gentlemen, was constitutional liberty of the older time; this was constitutional liberty of his party as bequeathed to us by our forefathers, the same as I said, gentlemen, a moment since. I propose to introduce to you two classes of witnesses as interpreting this memorable instrument, the constitution of the Ku Klux Klan. First, I propose to introduce those who have been inside of the Klan, who have learned its dread purpose, worn its gown, carried its pistol, and blown its signal whistle. Then, gentlemen, I propose to introduce to you those who have felt its blows and withered under its scourging; and then I will introduce to you the widows and orphans, the victims of its cruelty.

First comes Mr. Gunthorpe; gentlemen you heard him upon the stand. He said: I joined this organization in 1868; I took there some oath, as near as I can remember, as that in this K. K. Constitution. I understood, when I joined it, that it was a society for mutual protection. When I got inside of it I learned that it was an organization in the interests of the Democratic party; and I rejected it at once and withdrew from it. I didn't know that there was any danger from colored people, but did not know what might occur, and I joined the society for mutual protection. When I got into it I then found that it was a cheat and a lie, and I withdrew from it.

But, Mr. Gunthorpe, how did you understand the purposes of the order would be carried out in 1868?

The answer. I was told that a meeting of the Klan had agreed that we should go to Rock Hill, and by crowding the poles, prevent the Radicals from voting.

This gentleman was what this Klan proposed in 1868, as it interpreted itself, this was what they meant by being on the side of constitutional liberty as bequeathed to us by our forefathers, this was what they meant by opposing the principles of the Radical party, depriving Radical voters at the polls of the right to vote.

Does anybody dispute Mr. Gunthorpe? Is there a person here who questions his veracity? You have seen him, gentlemen, on the stand, no fairer, franker or bolder witness ever stood there. He cannot be impeached. Who is the next witness? Mr. Gunn. We have had, this morning, an attack upon that gentleman. The distinguished counsel on the other side has followed him to Georgia; followed him to Washington; followed him back to South Carolina, and followed him to this court. And what do they say? They say he is not entitled to be believed, because he received from the Government at Washington, two hundred dollars, for the time spent by him, at its request, and the loss to his business, thereby, all that he had lost in seeing the Attorney General of the United States, and giving him the information that he possessed, and mind you, he received that compensation two months after the services were rendered.

Now my associate, the Attorney General of the State said, and he said what was true, that no motive of a pecuniary character can be attributed to Mr. Gunn. He was not told in Georgia that he would be paid if he went and confessed to Attorney General Akerman, but he went to Cartersville, Georgia, to see him freely, and was not promised, if he went, one single cent, or a word said about compensation. He was without pay until he found himself in Washing-

ton four months after, when he went to the office of the Attorney General, and there the Attorney General gave him this compensation for his time and trouble. If the compensation had preceded the information, then they might have talked about it, and cast some slur upon him. But would it be gentlemen, just and fair to discard and disbelieve the distinguished counsel in his argument here before you, because you know he is to be compensated for his services, that will not do. I am here—my assistant, the Attorney General is here, the distinguished counsel on the other side are here, because it is our profession, and we live by our profession. You, gentlemen, live by your labors or professions, you must be rewarded, you must be paid for what you do. Mr. Gunn, through his brother-in-law, to whom he revealed that a horrible crime was about to be committed up in York county, S. C., against Mr. Wallace, was reported to Attorney General Akerman. He did not seek the Attorney General first, but, having revealed the fact to his brother-in-law that he was inside of the Ku Klux Klan, and that the Klan intended to murder Mr. Wallace, a member of Congress from York county, South Carolina, his brother-in-law communicated the fact to the Attorney General, and the Attorney General sent for him. Does he appear here as a swift witness? Is he here offering to sell his information to the government? Not at all. But his heart (and I imagine it would have melted a much harder heart than his,) relented when he learned that the Klan to which he belonged contemplated a most horrible murder, and, out of the goodness of his heart, he revealed the fact that should become known to the government. Why did the distinguished counsel on the other side assail him? It was because his testimony is important—because he speaks the truth, now that he has been led to speak at all. He speaks boldly and speaks the truth. Could he not have concealed the fact that he received compensation? Is there any evidence except what he gives upon the stand? He could have concealed it. Had he lied in other respects, with the oath of God upon him, would he not have concealed this? Would he not have done so, had he been such as the distinguished counsel would have you believe him to be? But no, gentlemen; he tells you the truth, frankly and fully. Further, every word that he has said of importance is corroborated, not only by the constitution and by-laws of the Klan itself, but by every witness who has testified in the case, so that, gentlemen, if you believe him to be a liar in general, particularly disagreeable to these gentlemen. I don't allude to this to prejudice your minds against them, but I can well understand how it grated upon their ears. It was the fact that the Klan were raising money to pay them for their services here. Gentlemen, I have not the eloquence or the strength of language to depict to you. You must believe that, in this instance at least, he has told you the truth. There is no ground for saying that Mr. Gunn is not to be believed; there is not a shadow of foundation for such an assertion. I do not like to allude to it, gentlemen, but it may be that there is a little information that came in the testimony of Mr. Gunn. My hatred, my disgust, my profound horror of the Ku Klux Klan and its deeds. I adopt the language of Mr. Johnson as he denounced it to you. No wonder that he felt annoyed at Mr. Gunn that the Ku Klux were collecting money from their Klan in Georgia to pay him for his services for defending the Ku Klux and brothers. What does Mr. Gunn say about this order? You saw him upon the stand; you saw how frankly and fully he testified. He says that the objects of this order are just what the constitution indicates them to be, and that its purposes are to be carried out by killing the white Radicals and whipping the black ones. Gentlemen, is not that a startling fact for Mr. Gunn to make, in view of the other testimony in the case? Have they not, gentlemen, killed the white Radicals, whipped, scourged and broken black Radicals? Has Mr. Gunn told you something that does not appear in this very case and throughout the testimony?

There is no question about it, gentlemen. I say if Mr. Gunn never told the truth before he has certainly told it now. He is inside the order. Why, the distinguished



connell assails him and says he is just as bad as the prisoner, and asks, why does not the District Attorney prosecute him? Why does he not stand with Robert Hayes Mitchell at the bar? Why, gentlemen, you know, and no person knows better than Messrs. Johnson and Stanbery, that the testimony of accomplices is constantly received in court, and not only received, but it is absolutely necessary to disclose the secrets of such an organization as this. Why, what is it? It is an organization bounded together, and bound by a most terrible oath, every man raising his right hand to heaven and invoking the vengeance of Almighty God upon him if he reveals any secret of the order, and not only that, but invoking the doom of the traitor, which is death! death!! death!!! How, gentlemen, are you ever to come at such an order as that? Simply in this way—men who have become acquainted with its crimes, and who know its purposes, who have since waked up to the terrible truth that they are felons, murderers, and have stepped forth and said, we will be no longer; we will do what we can to break up and destroy this foul conspiracy, and make what reparation we can to the world for the part we have taken in it. We will tell the truth, and the world shall know of this Ku Klux Klan. You have heard, gentlemen, all this testimony, and you are to judge of it; and these witnesses, in the light of repentant criminals, who are willing to offer themselves as witnesses for the benefit of society—we have used them, gentlemen, and we ask you to scan their testimony and give it its true value.

Next comes Mr. Foster. He has been inside this order; he has ridden on its raids; he has scourged the back of the dark Republican, but he has repented it, and now he hopes to tell the truth. What, gentlemen, does he say? He says the purposes of this order were political, and that they were to be accomplished by intimidation—by whipping and scourging the members of the Radical party; that in pursuance of this purpose he went on two raids. On the first raid, he says, we whipped five colored men. On the second we whipped four. Is there any doubt about this fact? Amzi Rainey, one of the sufferers, has been on the stand. Also, one other has been upon the stand, Dick Wilson. Foster says: twenty of us went on that night and whipped them, and almost whipped them to death. What does Dick Wilson say? He says "they did whip me. They beared my back, and they scourged me till I was almost dead."

But does Mr. Foster not agree and sustain with Mr. Gunn? Yes, certainly, in every respect. On the other side, does the counsel assail Mr. Foster? Not in a single word. Foster speaks like a man who has passed through a horrible experience, who has suffered in his own conscience, and determined to repair the injury he has done.

John Caldwell appears next upon the stand. "They beat me with ramrods of iron and oak. Is there any doubt about this, gentlemen? Do the gentlemen on the other side question this testimony? Here is the slayer, and there is the slain. Here is the man who did the deed, and here is the man who suffered. Is the testimony of accomplices to be received? Is what they say not true, not supported by most indubitable proofs? What does he say? "I took that K. K. oath, I remember that I was to be on the side of constitutional liberty, as bequeathed to us by our forefathers, and that I was to oppose and reject the principles of the Radical party. I was a member of the Ku Klux Klan." Well what did Mr. Caldwell do? He says, "I rode on the raid that killed Jim Williams. I was there. We met at the Briar Patch; traversed the road; met Robert Hays Mitchell at the Cross Roads, near Esq. Wallace's; he joined us in disguise's, and rode with us on the raid. We hung Jim Williams on a pine tree. It is true I did not go up and see the hanging, but after it was over, I asked Dr. Bratton what they had done with the 'nigger,' and where he was, and he said, 'he is in hell, I expect.'" Here you have the conspiracy in motion; here you have the victim "hung on a pine tree." There is no doubt, no mistake, there is no doubt about this raid. Is Mr. Caldwell to be believed?

Let us slip over to the other side of the bushes, to the house of Jim Williams. Hear Rose Williams, the widow, she says that "they came to my house that night, they took my husband, Jim Williams out, and the last I heard of him was a struggle as though he was choking. I followed them to the door, and tried to go, and begged them not to hurt him, but they drove me back and told me to go to bed with the children, but I did not, I looked through the crack and saw them retreating to the woods. I never saw him alive again. I saw him next morning dead, with a rope around his neck, hanging on a pine tree." Is Mr. Caldwell to be believed? Ask the dead body of Jim Williams. Ask the broken hearted widow, who has told, in simple language of the loss of all she held dear. Ask the fatherless children.

Who is our next witness? Elias Ramsey—halting in speech, but honest in manner and matter. He says: I was at the meeting of the Klan at Sharon Church, York county. I saw this defendant there in the meeting of the Ku Klux Klan. I rode on the raid, and went with him. We met that dark cavalcade near Wallace's, and together went to hang Jim Williams. We joined the party and went in together. Q. What does he say they did? A. I stayed with the horses until the party returned and the order was given to mount, and I heard somebody say: We hung Jim Williams, no doubt of that. Next, gentlemen, we put upon the stand little Sammy Ferguson, the only support of a widowed mother—a lad of sixteen years, taken and initiated that very night. He takes the oath, goes to the Briar Patch, and rides on the raid to murder Jim Williams. These, gentlemen, are the acts of the Ku Klux Klan. Do they not sustain the declaration of Mr. Gunn? Was it not true that they intended to kill and whip the Radicals, or those who voted the Radical ticket? Neither you nor I or the world will ever doubt it to the end of time. Gentlemen, you have listened to the testimony of those who were in the order, now listen to the testimony of those that suffered: 1st, Amzi Rainey. And what does he say? He says, I "was quietly sleeping, with my wife, at home; my house was surrounded and the doors broken in, and they shouted, 'where is the damned nigger?' I fled to the loft, and when my wife said 'he is gone,' they commenced beating her over the head, telling her that she lied, and that they would kill her for lying. Shortly afterwards they discovered where I was, and I was brought down; and then the party who first assaulted my wife, returned and beat her again." They then knocked him to the floor; shouting as they did, to kill him. His little daughter rushed from another room, crying, 'don't kill my papa,' when these villains fired upon her, hitting her in the head. After riddling the house with bullets, they took Amzi Rainey hence into the open air, swearing that they would kill him; and when two or three hundred yards from the house, one of them, says no let us stop; let us talk to him before we kill him; and he turned to Rainey and says, "Are you a Radical?" and he says, "yes." Will you raise your right hand and swear that you will never vote the Radical ticket any more? If so I will save your life. Rainey replies "I will do anything to save my life" And he says I then and there raised my right hand to Heaven and swore, against my principle, "that I would never vote the Radical ticket any more." Then the commander of this Klan says to me—come this way, and he took me out of the crowd and said, "run," and he ran! And as he ran several rocks were thrown at him. This is the way gentlemen, and this is the method, in which this Ku Klux Klan proposes to stand by the Constitution in its original purity, and this is the manner in which they propose to oppose, and reject

the principle of the Radical party. The Constitution of the conspirators and conspiracy in motion are all one, and are harmonious from beginning to end. Next is Dick Wilson. I have alluded to him before. He says they came to my house; and they commanded me to make up a light, they compelled me to go into the open air, and said *we will make a Democrat of you to-night*; pull off your clothing, stretch out! And he stretched out and they beat him till they were tired, and they asked him, will you hereafter vote the Democratic ticket. And he said, *I will*. That is the way constitutional liberty is maintained by this organization. That is the way they oppose the principles of the Radical party. Is there any doubt about this, gentlemen? The man who sits there helped to do it, and those who did it, and those who suffered, all concur and neither you nor I nor the world, will ever doubt. Next comes Gadston Steel; he is of the colored race; he says, they came to my house; they knocked at my door; a dozen of them seized me; their hands were all over me; a musket was before me and a gun was behind me, and a pistol punched my head, broke the skin and caused the blood to flow. They first ask, have you a gun? I told them no. They then, turning to the old man, say, what sort of a boy is this? The reply is, he is a good sort of a boy. They then ask, what ticket did he vote? He says, I must tell the truth, he voted the Radical ticket. "God damn him; we will kill him for that." Here is the purpose of the Ku Klux Klan, and this is the way they propose to defend constitutional liberty in its purity. They then take him up to No. 6 of the Klan. No. 6 makes him a very low bow, and with his horns hooks him and gouges him in the breast, and asked where is Jim Williams? He does not know exactly where Jim Williams lives. Has he got any guns? I don't know; but I think he might have. The poor man is near frightened to death with No. 6. Get on behind here and go with us to where he lives. He mounts the mule and they start off; but the mule is not able to carry both when this brother Ku Klux, in language more forcible than polished, says "This God damned negro is too heavy," No. 6 answers, "Put him down," and he is put down. Then the Ku Klux say to him: "Don't you vote the Radical ticket any more. We are going to kill Jim Williams, and all you damned niggers who vote that ticket." Is there any doubt about this, gentlemen? Does anybody dispute this testimony? Do you doubt Gadston Steele? Not a word to contradict him—not a suggestion from the distinguished counsel on the other side, what do their expressions indicate—these night rider cavalades of men? What is the object of their marching in darkness? It has been said to you that what was said by any of the conspirators was the language of the defendant here. The language of his associates was his language. Can there be any doubt as to why they proposed to kill Jim Williams? Can there be any doubt about the purposes of that band of armed men? No doubt whatever.

Who is the next witness? Hiram Littlejohn. He is a citizen of color, and has been upon the stand. What does he say? They came to my house just before day. They were on their way from Jim Williams', going towards Yorkville. They asked me for my gun. I told them that I had none but a double-barrel shot gun, and they took that. Then they asked me what ticket did I vote? I told them I voted the Radical ticket. "Don't you vote it any more, do you hear? We killed Jim Williams to-night, and intend to

rule this country or die. Here, gentlemen, you have the declarations of the Klan while executing its mission on their way to kill Jim Williams, and on their way from the scene of his execution! Is there, I ask, any doubt about the purpose of this order? Out of their own mouths, gentlemen, by their own deeds, they are convicted. But, gentlemen, there is one piece of testimony which, to my mind, is equally significant with the direct testimony of these two men. You will remember that this band of Ku Klux brethren, after they hang Jim Williams on the pine tree, called at the House of John Bratten, and as they called him out and he came to the door, they said to him, what do you mean by having these guns upon your place? He says, "I cannot help it. I ought not to be held responsible for what Governor Scott has done." They reply we will hold you responsible hereafter. He then says, "I am not a Radical. I did not give them the guns." What made him say that? He knew the purposes of that Order, and that their purposes were not only to take the guns, but to punish Radicals. Hence, he said I have not given them the guns, and I have not voted the Radical ticket. Here, gentlemen, we have unquestionably an unwilling witness, declaring what he knew perfectly well were the objects and purposes of the Ku Klux Klan, and of this body of raiders and murderers of Jim Williams. Behold, gentlemen, the dark deeds of the Ku Klux Klan! Does not the civilisation of the age start back in horror and stand aghast at the sight! Will not the world shudder, as it reads the testimony of this trial, and will it not be said wherever it is read, the dark ages and the doings of savages upon our Western frontier present no parallel to this. I join, gentlemen, with the distinguished counsel on the other side, who, in the goodness of his heart, could not stand here and defend the deeds of the Ku Klux Klan.

Now, I have presented to you as briefly as I could, the evidence upon which we ask a verdict if guilty at your hands, and I propose now to argue. What is the defense set up by the learned counsel for the prisoner? Why, gentlemen of the jury, the most distinguished counsel of the land—both of them Ex-Attorney Generals of the United States—who have been at the bar for nearly half a century, have justly adorned it—the fame of one of them at least—has become the pride of the American bar. What is the defense which these distinguished men make to this charge against the prisoner? Do they deny by testimony, the Constitution and By-Laws of the Ku Klux Klan? Do they attempt to deny that paper as the basis of the organization of the Ku Klux Klan, to which their client belongs? Not at all; they don't assail that constitution, they don't deny the interpretation put upon it, they do not deny its language, don't attempt to excuse its operations. They don't deny the evidence of Mr. Gunthorpe or Foster, or Rainey or Kirkpatrick or Ferguson; members of the Klan. Do they attempt to dispute them, do they attempt to produce anybody here to say that those men have not told the truth? Do they attempt to impeach their testimony of Dick Wilson, Gadston, Steele, Hiram Littlejohn? Do they attempt to deny the crimes committed by this terrible Klan, committed by the associates of their client? Not at all, not one word of testimony or argument, nor one word of excuse. What then is the defense? What can they say, what do they say? They say there was a state of terror and fear in York county, on account of the three militia companies, on account of the burnings, on account of the Union League,

and on account of the threats of "Jim Williams." But, gentlemen, does this explanation excuse the Ku Klux Klan? Admitting, for the sake of argument, which we deny, that all is true, do they show, or attempt to show, one tittle of evidence that this organization was the result of that fear? Is there anybody here that says that but the distinguished counsel, and they only by way of argument? Do they connect their client with that fear in any way? Do they show that it was an organization for protection—for protection against threatened danger—do they pretend that? Why, gentlemen, read the constitution and by-laws of that Klan, and see if it was an organization got up to defend their wives and families against danger. There is no such thing in it. The leading features I have discussed and shown to you. They are for political ends—they are for the purpose of defending constitutional liberty, as bequeathed to us by our forefathers, and to reject the principles of the Radical party. Is that protection?—do they use such language and mean protection? Does it appear from the evidence that there was fear of Jim Williams, or fear of the Union League, or fires which occurred at midnight in York county, before or after the organization of the Ku Klux Klan. But admitting all they claim in that regard, and the organization of the Ku Klux Klan is still unexplained. It is still the terrible dark and devilish conspiracy the testimony shows it to be. But what they claim, gentlemen, we will show by the testimony is not true. First, as to the militia companies, when were they organized? In 1870. When was the Ku Klux Klan organized? In 1868, two years before. Can anybody say, is there any gentleman so learned or so eloquent as to endeavor to persuade you to believe that the militia companies organized in 1870, created the Ku Klux Klan of 1868? Why gentlemen it is too absurd to talk about. They could not have been the cause, since they were organized after the Ku Klux Klan was organized. Now as to the Union League, the gentlemen on the other side have not attempted to assail the character of the Union League in argument or in testimony. That it was a proper organization is not denied. That its objects were carried on in a lawful manner there is no denial. That it was a bad organization in itself, that its principles were bad, nobody claims. No one claims that it did a single act during its whole history of which anybody could justly complain. Are we to be told, are we to be asked to believe that the Union League, a perfectly harmless society, was the cause of the organization of the Ku Klux Klan? Why, if it was, tell us what the Union League has done. Tell us how it has organized the Ku Klux Klan. Not a word, not one jot or tittle of evidence is there, attempting to impeach the character of the Union League. Gentlemen, if they could have impeached the character of that society, would they not have done it? Are the distinguished counsel on the other side ignorant of what they could do, or ought to do, if the Klan had its birth in such a cause? Certainly they are not ignorant; and the counsel who last spoke said, "I have not a word to say against the Union League," and that is the end of that argument. And now as to fires in York county, said to be incendiary, that took place two years after the organization of the Ku Klux Klan, and months after there had been murdering and whipping the colored citizens of York county. Will they attempt to say that the Ku Klux Klan had its birth in these fires and outrages in York county? Why, gentlemen, the same answer can be given to that as was given to the other, to the organization of the militia companies. The organization of the Klan took place

two years prior to any burning, and the raiding of the Klan was two or three months before the burnings of which they complain in 1870.

So, gentlemen, this defense, this attempt at paliation, this attempt at explanation, this attempted excuse for the deeds of the Ku Klux Klan, is blown to atoms. It has nothing more in it than the breath of the distinguished counsel who suggested it. But what is the testimony on that point? We put two witnesses on the stand. What does Mr. Lowery tell us? He says the fires took place long after the raiding of the Ku Klux. The fires took place in January and February. Poor Tom Roundtree, colored, was killed by the Ku Klux Klan on the second night in December previous to that; all that part of the country was being raided night after night by the Ku Klux Klan. The fires took place a month or two after. Is this, then, any defense of the Ku Klux Klan in York county? Can the distinguished counsel say to the world they organized for self protection (?) against the fires that lighted up the horizon in York county, in January and February, when the fact that these murders and raids had already driven the colored people to their graves or to the thickets for concealment, at night, long before that occurred. Gentlemen, I feel that I would be wasting your time if I detained you to show you that the excuse given here by the counsel on the other side and given up in York county itself, had no foundation in truth or in fact. Gentlemen, there is not a witness, either for the prosecution or the defense, that locates the body of these fires till months after these outrages had been perpetrated. The only burning to which a suspicion has attached has been proven to have been the work of white men and not of the colored men. The man whose building was burned, Dr. Addison, says he was satisfied, from the tracks left there by the incendiaries, that it was a white man that did it, and not a colored one; so that not a suspicion, much less a fact, of burnings is fastened upon any colored man in York county, or upon anybody, ten months after these raidings and murders were committed.

But, gentlemen, we come now to their last defense. They say that the raid upon, and the murder of, Jim Williams is to be attributed to his own threats to "kill from the cradle to the grave." Gentlemen, let us examine this last strong hand, this pretended evidence. It is said Jim Williams made threats. Jim Williams is dead. His voice is hushed forever, and though evil men assail and revile his memory, he will not reply again. We must depend for his vindication on his conduct in life, and in the testimony of those few faithful friends who stood by and appreciated him in his hour of peril and of death, I say to you, gentlemen, and I appeal to you on the testimony only, there is little to censure in the language of Jim Williams, when you remember when and where he said it, and when you understand it as he meant it. I have been once hurt upon this trial. It was when Mr. Stanbery said, in your hearing, "Had I lived in York county I would have joined the first squad, and gone to arrest Jim Williams." Gentlemen, in the light of the testimony which has not been contradicted, how could he say that? I pity the head, if not the heart of this gentleman. Gentlemen of the jury, that was as gratuitous a remark as one other remark made by that distinguished counsel, which was, "I am not mixed up with your local quarrels in South Carolina. I am not mixed with your politics, I came from a distance, but I tell you colored men of South Carolina, if you attempt to make a step in advance of the white race, your doom is sealed!" Why did

this distinguished counsel make such a remark? Is there a pretense in this case, is there a pretense in South Carolina, that the colored men have attempted to do this? I tell you no, gentlemen, the colored men of South Carolina are struggling to become men; they are struggling to exercise the right of American citizens, they are struggling to protect themselves and become what the Constitution says they shall be—clothed in all the rights of American citizens. Gentlemen, I do not come here to encourage, and I have never encouraged colored men to aspire to or to claim anything more than is conceded to white men, but to all political rights and rights of property they are fully entitled. The laws of this State are equal and just. No political party in South Carolina attempts to impeach the Constitution which the colored people of this State have made. But, gentlemen, that distinguished advocate comes from a State which has not advanced as far as South Carolina. He comes from a State that does not allow a colored man to sit upon the jury or testify upon the stand, hence we may well excuse him for some little aberration of mind. His is the State of Kentucky; but all such remarks have a purpose. What that purpose is, I leave to you and the country to judge. What I do say to you is that, whether wise or unwise, whether just or unjust, the colored man in South Carolina is raised by the fundamental law of this State, and that law is supported by the Constitution of the United States and by the great American people, that the colored man shall be a citizen, and he shall be protected in all the rights of an American freeman. Now as to the threats of Jim Williams. Who says he made threats? Mr. White says he is a member of the Legislature from York county. I have known Jim Williams for eighteen years, and I have known him to be a peaceable, quiet and unoffending citizen, and I never heard him make a threat. I never heard of his making a threat until after they had hung him. He was incapable of "killing from the rattle up," unless he had a terrible provocation. What does Mr. O'Connell, of the House of Representatives, say? He says that he was driven from York county by the Ku Klux Klan, and did not dare go back there until our distinguished friend here, an efficient officer of the United States army, Major Merrill, made it possible to live there. He further says: I know the reputation of Jim Williams, and I know none who stand higher. I never heard of his making threats, and I knew him well, until after he was dead. Andy Simms says: I was the clerk of his company, and was his bosom friend. I helped organize the company. I was with him day and night, and I never heard him make a threat—I never heard of his having made a threat until after they had hung him upon a pine tree. Now gentlemen, let us examine the testimony of their own witnesses. Mr. Bratton, a witness called for the defense, says, "I heard him make threats," and you will remember, gentlemen, that I asked him in what connection he made threats, and he replied, that "it was a reference to the raids of the Ku Klux Klan, that the Ku Klux Klan came to this neighborhood, and raided upon the people here, as they have done on other portions of the county, I will take my company, and I will fight them, and if worst comes to worst, I will kill from the cradle up!" gentlemen, there is the light in which he made those threats. He says, substantially: "if I am to be murdered as Tom Roundtree was—if the colored people—my fellow citizens—are to be killed and whipped by the Ku Klux Klan, I propose to fight myself and carry on war." Another of the

defendant's witnesses, in the same connection, testified that when he uttered those threats, he said this: "I think the best way to do in this fuss is that the white and colored people, if they must fight, shall go to the old field and fight it out like men." This, then, gentlemen, was what Jim Williams meant. Does anybody blame him for it? Does the honest man live who can stand up and say that Jim Williams, in the light of the murders about him of his race, was not justified in making threats? or, at least, if not justified, excused or excusable? I do not, gentlemen, defend threats of violence; we have had too much of it in this country, and it is too common in our midst. The people ought to learn that in a tribunal of justice are they to seek redress for all their woes. But, gentlemen, the courts, the tribunals of York county, were deaf, they were paralyzed, in the presence of this all-pervading organization of the Ku Klux Klan, and Jim Williams felt, as he had a right to feel, that his own life, and the life of his fellow-citizens of African descent depended upon their own strong right arms. It was that right arm that he invoked on these occasions when he made these threats, if threats they can be called. Is it possible for you to believe, from all the testimony in the case, that he referred to anything else than the salvation of his own life? The Ku Klux Klan was raiding, murdering and destroying his race, and the only wonder to me is, and I say it to the people of York county—the only wonder is, that your houses are not all burned! The only wonder is, that many of you were not assassinated at midnight. The only wonder is, that many of you now still live! I desire to make use of the language of the distinguished counsel on the other side, where he says: Self defense, self protection is written upon the heart of the infant when born into the world. I can only say, gentlemen, that, in my judgment, it was not written very legibly upon the hearts of the colored people of York county. If it had been, the worst forms of civil war would long ago have been inaugurated there, and they would have reason to say the colored people intend to kill from the cradle to the grave! But gentlemen the member from that county in the House of Representatives of this State tells us that that fear was all a pretence, that it had no real foundation. And now, gentlemen, let us see if he is sustained by the facts. Gentlemen, the history of the war, and the conduct of the slaves during the war are not forgotten. Did the white people of South Carolina fear the colored race during that long and terrible war? That war, at least during half of its continuance, was waged with the express understanding on one side, that if successful the slaves were to be set free. But notwithstanding this temptation did the Confederate soldier fear to leave his wife and family in the hands of his slaves at home? Did he fear that they would rise and kill from the cradle to the grave? Did he not go with the armies of the Confederacy far to the front to fight the army of the Union, and leave his wife and children, helpless ones, in the hands of his slaves? Since the close of the war have they had occasion to fear the rising of the colored people? When the bonds of slavery were broken and when the slave was told that he was free, did he seek to revenge himself upon the white race that had bound him for two hundred years in bondage? Is there any instance in the whole South where we have seen anything like revenge in the conduct of the colored race? I tell you, gentlemen, no! The testimony of all the white people of the South can be invoked with safety upon that point. No public speakers, even in the Democratic ranks, representing, if you please, the Ku Klux Klan, dare, in pub-

lie, charge that the colored people of South Carolina—once slaves, now free—have attempted to retaliate upon their old masters. No, gentlemen; they have been a patient, long-suffering, quiet and peaceable race. They have only sought to take and enjoy the blessings of freedom secured to them under the Constitution. Did they commit any outrages before 1868, before the organization of this Ku Klux Klan. Mr. Gunthorpe says I didn't see any occasion to fear. I didn't know why the Klan was organized in 1868, but I thought if there was any danger I would join it, and have the benefit of it; but, when I came inside the Klan, I found it was not for self protection at all. There was no such purpose in it. What was it? It was to go and elbow voters from the polls. Still later, has there been anything in the conduct of the colored people of York county to cause this state of terror and alarm? There is not one word of proof to show it, except that they had reason to expect retaliation for wrongs perpetrated upon the colored race. Gentlemen of the jury, we can only say that the testimony of some of the witnesses cannot be true. The white people of York county would not so testify if upon the stand. We can only say of the testimony of three or four witnesses that have been put upon the stand for the defense, that the history of the colored race during and since the war contradicts them. The conduct of the three militia companies in York county is not enough to justify the fears and the alarms of which they testify. What does Mr. Alburus Hope say? "I was in the Klan which we organized for protection—to protect my house and family, and the colored people, upon my place, against the white peoples raiding round"—not the colored people that were raiding round! Mr. Hope is the best specimen of the Ku Klux that we have met in the history of this trial. He felt it necessary to organize a Klan to protect himself and his laborers against the white people that were raiding around. Gentlemen, here in the presence of all this testimony, in the light of history, we say to you, that this terror is all a pretense; the fear of the colored people was not justified, and it did not, in fact, exist. But gentlemen I hasten to close this argument, I do not care to say a word upon the technical point, raised against this indictment, and the proof—the Court will tell you that this conspiracy to deprive the colored citizens of York county, of the right and privilege of voting, the admonition that they gave to every colored man as they whipped him—never vote the Radical ticket again—includes the election of 1872. I will not waste any words upon that point, because, gentlemen, common sense, which I know you possess, and the law that I know you will receive from the Court, furnish a complete answer. The precedent, if the Court please, which the distinguished counsel cited, does not apply to this case at all. Proof of a general conspiracy to cheat, as is said, does not prove a conspiracy to cheat a particular person. But that is not this case, that is not this indictment. This is a general conspiracy to deprive divers colored people of the right to vote in the election to take place in 1872, and the proof is that a conspiracy existed to prevent voting at all in the future. Does not that cover the election of 1872? We fully comprehend in the proof the election of 1872. But as to the 2d count in the indictment, I need scarcely say a word. You have heard of that dark cavalcade of disguised men on their way to kill Jim Williams. They said, we are going for his arms, and we are going to kill him, and "every damned nigger who voted the Radical ticket!" I do not deny, gentlemen, that they had two purposes,

but that was one of them, and the court, I think, will so tell you. Gentlemen of the jury, this is no common cause. Your verdict will mark an era in the history of the administration of justice in South Carolina. The smoke of battle and the sound of arms of the great rebellion have just passed away. With the close of that great tragedy humanity has swept onward. The arm of the nation has been stretched out to protect the as yet ignorant but enfranchised freedmen. The bonds of the slave have been broken, and the voice of the American people is, and the people of South Carolina and the people of the South must hear it, listen to it, and be governed by it, that the rights of the newly enfranchised citizen shall be protected. We have discovered, gentlemen, a fearful conspiracy against these rights in an armed, equipped organization, composed, alas, gentlemen, of many soldiers in the late war who promised to lay down their arms, retire to their homes, and behave like good citizens. This organization, composed of many of the soldiers in the late rebellion, is found bearing arms, marching in squadrons at night, and for what? To defeat the very principles achieved in that contest by the Government of the United States. I say to them—I say to every individual in this armed organization—in the name of God, disband! Go to your homes, meet no more; because the uplifted arm of this nation, otherwise, will crush you, will grind you to powder! If the late war left you poor, in poverty and distress; if the arm of the American people has again to be raised to put down this organization, I fear it will make your homes a desert and your fields a wilderness. One thing, gentlemen, is certain, I hear it in the voice of the President, in the language of the *Lev* Attorney General, and I heard it in the language of the one about retiring, and it throbs in the heart of the American people, that this organization to defeat the rights of our colored fellow-citizens *must and shall be put down*. Gentlemen, I am here as the representative of the Government for that purpose. I tell you, and I tell the people of South Carolina, that if this thing is not put down, woe, woe, woe unto them. Gentlemen, you have heard the case, you have listened patiently to the evidence, and I now look with confidence for a verdict at your hands.

At the conclusion of Mr. Corbin's argument, Judge Bond charged the jury as follows:

JUDGE BOND'S CHARGE TO THE JURY IN UNITED STATES VS. MITCHELL.

*Gentlemen of the Jury.*—You have listened with patience to the recital of the evidence in this cause, and without commenting upon *that*, the court proposes to state to you the law, applicable to the evidence, which must guide you in making up your verdict. The indictment gentlemen is for a conspiracy, which is an agreement by two or more persons to do an unlawful thing, or to do a lawful thing by unlawful means. The thing to be punished is the unlawful conspiracy, and not the particular acts done in pursuance of it. The conspiracy is a crime if nothing be done in pursuance of it.

The indictment, gentlemen, contains two counts. The first charges that the defendant and others, jointly indicted with him, with having conspired to violate the first section of the act of May 31, 1870, by unlawfully hindering, preventing and restraining a certain class of persons therein named from the future exercise of the right to vote at an election to take place in October, 1872, on account of their race, color, or previous condition of servitude.

And the second count charges that he, with others, did conspire to injure, because of his color, James Williams, because he had exercised the right to vote previously. It is to these counts that you are to refer the evidence and to apply the law which the counts give

you. If you find from the evidence that there was no such conspiracy as that described in the first count, or if there was a conspiracy, the object of it and its purpose were different from that set forth in the count, and that the object and purpose set forth in the count was not one of its purposes and objects, then the party charged is not guilty under the first count, though he may have been engaged in the conspiracy. But it is not necessary, if the jury find there was a conspiracy and that the party was engaged in it, that they should find its purpose to have been single. If they find that one of its purposes was that set forth in the first count, to prevent citizens from the exercise of the right to vote because of their color, it is sufficient. An association having such a purpose is an unlawful conspiracy, and a party engaged in it may be punished under the first count.

Each member of such an association is a conspirator, and is responsible personally for every act of the conspiracy and for the acts of each member thereof, done by common consent, in furtherance of its illegal purposes, and also for such acts done in furtherance of the conspiracy not consented to before hand, if assented to subsequently to their perpetration, and that whether the party charged was himself actually present or not when such act was done. And if the jury believe from the evidence that the various Klans spoken of by the witnesses were but parts of one general conspiracy, this rule applies not only to the members of the same Klan but to the acts and conduct of the members of the different Klans done in furtherance of the conspiracy. And it makes no difference in guilt if you find from the evidence that the motive of a party who joined the conspiracy was not illegal when he did join it, if you also find that after he became a member he was aware of the fact or had reason to know that the true object of the conspiracy was to prevent or hinder the free exercise of the elective franchise by intimidation or violence as aforesaid, on account of color, and that he still remained a member and participated in its meetings, and that though you may also find he never himself actually used the force, intimidation or violence and was not present when it was used.

And now, if the jury find from the evidence that the party charged did so conspire to prevent the citizens described from exercising their right to vote on account of their color at a future election specified to be the election to take place on the third Wednesday of October, 1872, then the party charged is guilty under the first count of the indictment.

And if the jury find from the evidence that they did so conspire and for the same reason, to injure and oppress on account of his color, one Jim Rainey alias Jim Williams, because he had antecedently on the third Wednesday of October, 1870, exercised his right to vote, then he is guilty on the second count.

But if the jury find from the evidence that no such conspiracy existed, or that if it existed, the intimidation or injury of voters because of their exercise of the suffrage, or to prevent its exercise, formed no part of its purpose, or that if that were its purpose, the defendant was not engaged in it, then the defendant is not guilty.

But the jury is not bound to believe the sole purpose of the conspiracy to be that set out in the first count; if they find it to be one of the purposes it is sufficient. Nor, if they find that the beatings and intimidation spoken of by the witnesses, took place or existed, are the jury bound to believe that the reasons given at the time by the conspirators, if they find reasons were given, were the true reasons for such conduct; but the jury may determine, from all the

evidence in the cause, what the true reasons were for such violence.

If the jury find from the evidence, as we said before, that the conspiracy set forth in the first and second counts in the indictment existed, and the defendant engaged in it there, he is guilty on both counts. If there existed no such conspiracy at the time set out in the indictment, or, if existing, it had another object which did not include that set out in the indictment; or, if existing, and having the illegal purpose, the defendant took no part in it, then he is not guilty.

The jury are at liberty to find one of three verdicts. They may find the party guilty generally, or not guilty generally, or they may find him guilty on one count, and not guilty on the other.

Take the case.

The jury retired, and, after an absence of thirty-eight minutes, returned a verdict of "guilty of the general conspiracy."

Mr. Stanbery wished the verdict to be recorded as rendered, but the Court said "No," very emphatically, and explained to the jury that they must find the prisoner guilty or not guilty on one or both of the counts.

The jury again retired, and on their return the Court stated that the first charge had probably misled them. He then explained more fully the purport of the charge.

Again the jury retired, and on their return rendered the verdict: Guilty on the second count, not guilty on the first.

Mr. Stanbery at once entered a motion for a new trial, and the Court adjourned.

## SEVENTEENTH DAY'S PROCEEDINGS, DECEMBER 19.

The Court met pursuant to adjournment. Hon. Hugh L. Bond, presiding. Hon. George S. Bryan, Associate Judge.

Thomas B. Whitesides and John W. Mitchell, were arraigned and they pleaded "not guilty."

A jury having been impanelled, Mr. Corbin opened the case for the Government. He said:

It seems almost unnecessary that I should make any remarks to you upon this occasion, but in order that you may clearly understand to which point the testimony is to be directed, perhaps it may be as well that I should say a word or two in explanation. We propose, in the first place, to establish the fact of the existence of a conspiracy in York county, against the rights of the colored people of that county, and the colored people, generally, to exercise the right of voting, and that the object of that conspiracy was to prevent by unlawful means, threats, force and violence, the colored people who are entitled to that privilege from voting. We shall show to you that this conspiracy was thoroughly organized and armed and equipped, and that they were armed with pistols and guns, and that their uniform was a mask and gown called a Ku Klux gown; that they carried out their purposes in the night time; that they intended to intimidate, control and prevent from voting the colored voters of that county by whipping them at night, and by concealing themselves, and escaping under cover of the darkness of the night. This is the general conspiracy. We shall show you that these defendants were members of that conspiracy.

We shall show you that in pursuance of the general design of that conspiracy both of the defendants, in with others, went upon several raids, and particular upon Charles Leach, a colored man, of York county, a resident, and entitled to vote in that county. That they whipped him severely, and whipped him because he had been a Radical and voted the Radical ticket heretofore, and to prevent his voting it hereafter. We shall show you, gentlemen, in this case, that a great

number of outrages were committed in York county, in pursuance of this general conspiracy, and by the conspirators, that they whipped, shot at and maltreated numerous colored persons of that county, who were entitled to vote, and that in pursuance of their general object they not only whipped and beat colored men entitled to vote, but they whipped and ravished women in pursuance of their general conspiracy.

To this end, gentlemen of the jury, the testimony of the prosecution will be directed.

**TESTIMONY OF OSMOND GUNTHORPE.**

Osmond Gunthorpe, a witness for the prosecution, was first introduced, and being duly sworn, testified as follows:

*Direct Examination by Mr. Corbin.*—Q. Are you a resident of York county. A. Yes, sir.

Q. How long have you resided there? A. About eighteen months.

Q. At what place? A. Near Ebenezer.

Q. State whether you were initiated into the Ku Klux organization, and if so when? A. Yes, sir; it was in 1868.

Q. By whom? A. By Dr. Avery.

Q. State what was the general character of the oath you took on that occasion? A. It was to protect widows, female friends, and their houses, and to reject the principles of the Radical party, and the penalty of divulging the secrets of the order was death.

Q. Will you listen to this oath, and state whether you recognize it as the oath taken by you when you were initiated into the order?

[The District Attorney here read the constitution of the K. K. K., already published.]

A. There are portions of it that I recollect, and some that I do not.

Q. Which portions do you recollect? A. One was to reject the principles of the Radical party. There is also that about protecting widows, our households and female friends; fellow members especially shall be under our protection, and the penalty is the same.

Q. What can you say as to the rest? A. I don't recollect. It was repeated to me, but I never saw it.

Q. What did you understand was the object of the order? A. When I was requested to go into it, I understood it to be an organization for self protection.

Q. Who represented that to you? A. Dr. Avery.

Q. Go on with your statement. A. But after I had been in some time, I found it to be a political organization in the interest of the Democratic party.

Q. How did you learn that the objects of the organization were to be carried out? A. It was to be put down by using no force; they intended to crowd the ballot boxes at elections, and to prevent all the members of the Radical party from voting that they could.

Q. Did you aid in that business? A. No, sir; I did not.

Q. What did you do, when you found that this was the character of the organization? A. I asked for dismission from the organization.

Q. From whom? A. Dr. Avery.

Q. Did you obtain such dismission? A. Yes, sir.

Q. And severed your connection with the organization? A. Yes, sir.

Q. How soon after you joined? A. I joined in August and severed my connection in November.

*Cross-Examination by Mr. W. B. Wilson.*—Q. You resided, at that time, near Rock Hill, in that county? Is that where the election was held? A. Yes, sir.

Q. Were the Radical voters crowded from the ballot box in October, 1870? A. I was not at Rockville at the time of the election.

Q. Do you know of voters being interfered with at Rock Hill? A. Not that I know.

Q. Were they interfered with at the Boynton box? A. Not that I know.

Q. Which population is in the majority at the Boynton box? A. The white.

Q. In a large majority? A. Pretty large majority.

Q. Can you say that it was ever resolved at any meeting you attended to crowd voters from the ballot box? A. It was not done at any meeting that I attended.

Q. And no interference with the colored people

at that box, as far as you know? A. Not that know.

Q. How did you understand that this organization that you joined at Ebenezer was to crowd voters from the ballot box? A. I was told so by a fellow member.

Q. By whom? A. By Mr. Cathcart.

Q. Where does he live? A. At a mill near the Catawba river.

Q. Was he chief of the Klan? A. No, sir.

Q. How did he know? A. He understood it was a meeting. I was not there.

Q. The only reason, then, for your so stating it was that Cathcart told you so? A. Yes, sir.

Q. Was not that a mere opinion? A. He said they had an agreement of that kind; he did not say it was an opinion; he said they had a meeting, and there was an agreement to that effect.

[Objected to by counsel for the defense.]

Q. You heard it from Mr. Cathcart—not from a meeting of the Klan? A. Yes, sir, from Mr. Cathcart.

Q. That is the only way in which you derived your information? A. Yes, sir.

Q. Why did you ask for dismission from the organization? A. Because I was dissatisfied; it was not what I understood it to be.

Q. Did you propose joining any other organization? A. No, sir, I did not.

Q. Do you know that the order which you say you joined at Ebenezer was broken up and disbanded soon after that? A. No, sir, I did not.

Q. Did you return to that neighborhood? A. I was there one time after that, but I never had it named; I staid all night with a neighbor, but I saw no person that belonged to the organization.

Q. You have no knowledge of the fact that the organization was entirely disbanded in that vicinity? A. No, sir, I have not.

Q. It was understood by the order that there was to be no force used? A. Yes, sir, that is what I understood.

Q. You understood that one object was self protection? A. Yes, sir, that is what I understood before I joined.

Q. Protection from what? A. There were talking, and they were fearful that there would be difficulty with the negroes.

Q. That was one of the threats or rumors in the country? A. I do not know whether there were any threats, but there was talking, and they were fearful.

Q. Did you exercise any precaution in the way of arming yourself? No, sir; I bought no arms, but I had some arms.

Q. Do you know of property being carried off at night? A. No, sir.

Q. Do you know of property at Rock Hill being carried off at night? A. No, sir.

Q. You were initiated in 1868. How long had you lived there before you were initiated? A. I moved there in January.

Q. And you left there the following November? A. Yes, sir.

Q. And that was the only time you lived in that neighborhood? A. Yes, sir.

Q. [By Mr. Corbin.] You say there was some talk of trouble with the negroes? Do you know of any trouble of that kind? A. No, sir; I do not.

Q. Did you participate in that fear? A. I did not feel in any way particularly uneasy; there was talk, but I do not know whether there was any danger or not.

Q. You had no evidence of any such danger? A. No, sir, only just talk. I never heard any of them make threats.

Q. Was there any trouble with the negroes during the war? A. No, sir.

Q. Did you reside in York County during the war? A. Yes, sir.

Q. State whether the people of York County went generally into the war? A. Yes, sir.

Q. And left their wives at home with the colored people? A. Yes, sir.

Q. And was it understood at the close of the war that the object of the Union army was to free the slaves? Question objected to.

Q. Has there been any trouble with the colored people during the war? A. Not where I live now.

Q. Have they risen to butcher or destroy anybody? A. No, sir.

Q. By Mr. Wilson. The fear of rumors was not the cause of your joining the order, was it? A. I thought sir, if there was such rumors and they formed an or



ganization for self protection, and other people thought there was danger, I would go into the organization with my friends and neighbors.

Q. At the election of 1870, was there not a large, full vote? A. There was a full vote, I believe, sir.

#### TESTIMONY OF SAMSON B. DAVIS.

Samson B. Davis, a witness for the prosecution, being duly sworn, testified as follows:

*Direct Examination by Mr. Corbin.*—Q. Where do you reside? A. Sixty miles west of York; three miles south of Hounly Road, in York county.

Q. How long have you resided there? A. A little over two years.

Q. State whether you joined an organization in York county known as the Ku Klux Klan? A. I joined an organization in January, 1871; but it was then known as the Invisible Empire of the South.

Q. At what place were you initiated? A. At my own house.

Q. By whom? A. Wesley Smith, a brother of mine, J. F. Fox and Marshall Davis.

Q. State the mode of initiation? A. The men were not in disguise, and I was not blindfolded. The oath was administered to me, but it was after night in the yard of my own house.

Q. Was the oath read or repeated to you? A. It was repeated. There was no written document.

Q. State what the oath was. A. I cannot state it accurately. I cannot recollect anything, excepting the concluding clause, which was death.

Q. State the substance of the oath. A. It was intended for self protection, but I cannot state fully the substance of the oath. I have not seen it since, but I should know it if I should hear it.

Mr. Corbin here read the constitution.

Q. Is that the oath you took? A. That is about the oath. I think it embodies the principles to which I swore.

Q. Do you remember anything that was not in that oath? A. If my memory serves me, there was nothing in opposition to the Radical party. I think it was opposition to the thirteenth, fourteenth amendments to the constitution.

Q. What signs and passwords were given you? A. I do not know all. One of the signs was taking the lapel of the coat with the right hand, which was answered by the other party taking the lapel with his left hand. Another sign was putting the hand carelessly into the pocket, leaving the thumb to be seen. I don't remember the answer to that. Another, passing the hand carelessly over the right ear towards the front. The answer to that was passing the left hand over the left ear.

Q. Do you remember any other signs? A. I remember the bywords and passwords used in meeting parties. You would use the word s-a-y—that is, spelling the word, but not pronouncing it, followed by "who are you?" The answer to that challenge was n-o-t-h-i-n-g, spelling the word, using the letters, but not pronouncing it, using those signs.

Q. Have you frequently recognized members of the Klan? A. Not frequently.

Q. Have you ever done it? A. I recognized once a party in disguise by giving the words; that was in February, after I was initiated in January, near Limestone Springs.

Q. What were the circumstances? A. I challenged the party and said, "I s-a-y, who are you?" and was answered, "N-o-t-h-i-n-g." They then passed me by; they were in disguise.

Q. What time of night was it? A. I suppose ten o'clock.

Q. Did you know any of the party? A. No, sir, none of them.

Q. Was it a large party? A. I judge it to be twenty-two or twenty-four.

Q. State if you ever attended a meeting of the Ku Klux Klan? A. I attended one.

Q. Where was it? A. Near where I live.

Q. When was it? A. A few nights after I was sworn into the organization; it was out of doors, ten o'clock at night.

Q. Who was present at that meeting? A. I cannot name all the parties; there was Tom Parks, Jefferson Gardner, William Gardner, Charles Kidd, Charles Byers, and Joseph Smith.

Q. Who was the chief? A. Charles Byers was the chief.

Q. What was done? A. The Klan was organized by electing Charles Byers Chief of the Klan, and appoint-

ing myself Secretary; a younger brother of mine was appointed Monarch.

Q. Any other officers elected? A. William Goode was appointed Grand Turk; he, also, was present at the meeting, but it had escaped my memory.

Q. Have you heard the constitution and by-laws of the organization read? A. I read them on that night. [A paper was here handed the witness.]

Q. Do you recognize that as the organization and by-laws of the Klan? A. I see it embodies the same, except that the Ku Klux Klan was then known as the Invisible Empire of the South. The constitution and by-laws embody the same as those to which I swore.

Q. Was that the first time you ever heard or read the constitution? A. Yes, sir.

Q. How was the purposes of that organization to be carried into effect? A. Those present at the meeting I attended, told me the parties against whom charges had been preferred must be visited and asked to change their opinion, and to vote the Democratic ticket. In case they did not do it, they were to be visited again and corrected by members of the Klan, and if they refused, to be whipped; and if they again refused, they were required to leave the county; in case they did not comply, they were to be killed. Those were the statements of members of the order.

Q. The operations of the Klan were to be directed against Radicals—that is, Republicans? A. Yes, sir, against Republicans.

Q. State what you know of the practical carrying out of that programme. A. I never saw any of it carried into operation, but I have seen parties who say they executed the orders of the organization.

[Testimony objected to.]

Q. by the Court. Were they members of the Klan themselves? A. Yes, sir.

Q. Have you learned from members of the Klan how they executed the purposes of it? A. I have.

Q. State what members of the Klan told you of them; what they did, and what they said they had done in pursuance of the purposes of the organization. A. Mr Wesley Smith told me that he, in company with three other men, had killed Charles Good.

Q. Who were the others that he told you assisted him? A. William Smith and William White. Smith was present and acknowledged that he had participated in killing Charles Good.

Q. Who is Charles Good? A. A colored man, who lives three or four miles from me.

Q. What were his politics? A. Republican.

Q. Was he well known to you and the community?

A. Yes, sir; he was known as a Radical or Republican.

Q. Had you at any time any conversation with Charles Good? A. Yes, sir. Charles Good was a blacksmith; he did my blacksmithing at his house. He told me that he had been visited and whipped by the Klan because he was a Republican and would not change his opinions but would vote the ticket again. I told him he had better not repeat that. About four weeks after, they returned and killed him.

Q. Was he a prominent man among the colored people in that neighborhood? A. I had known him about sixteen months before he was killed; he was rather a prominent negro in the community.

Q. Was he a preacher? A. He was not.

Q. Tell the court and jury what you know about the manner of his death. A. I know nothing, except those persons who came to me and told me I had been summoned to go with them and others to put the body of Charles Good into the river. That was the summons I received. It was in furtherance of the order which they gave me from the six composing the Klan. Charles Byers directed me. I knew no others of my positive knowledge. I knew him to be Chief of the Klan. He said that I must go with the party and put his body into the river. I went out about the hour of nine and went to Mr. Howell's residence, and there, in conversation with me, he expressed a desire not to go with the party. I told him it exactly corresponded with my feelings. I had not seen the body and did not wish to, and we did not go until we thought the hour had passed, and remained there until the party came back.

Q. Were they men of your Klan? A. I do not remember any present attached to my own Klan.

Q. Were there any persons that you knew?

A. There were several persons I knew; none of the parties were in disguise that I seen. I recognized Wesley Smith, Samuel Smith, T. L. Barr, and Pinckney Caldwell.

Q. Was Wesley Smith the man who told you to go? A. Yes, sir.

Q. What had they done with the body? A. They remarked the body is in the Broad River; he knew it was at the bottom, well jammed down and secured. He stated the negro was very heavy to carry.

Q. Did they tell you how they fastened him down in the river? A. Wesley Smith stated that there was cotton bagging wrapped around the body, and log chains were fastened around him, and to that they attached some heavy plow shears, and Pinckney Caldwell said he had pinned the body to the bottom, for he had jumped in upon it, with stakes furnished him from the bank, and with these he had fastened it to the bottom.

Q. How long was this after Charley Good was killed, that his body was disposed of in this way? A. If I mistake not, it was Friday night this was done, and the act I believe, was done on Wednesday night.

Q. State how the Smith's, or the party engaged killed him? Wesley Smith said he had attempted to shoot him, but the gun not going off in his hand, he turned to his companion and asked him if he could get it to go off. The negro asked him if he intended to kill him, and Wesley Smith said not kill him, but whip him well; but the gun was discharged; he was not killed with the shot, but fell, and William Smith told me afterwards that he finished him with his gun. Wesley Smith said "when I left he was finished."

Q. Where did that occur? A. It was near Wesley Smith's residence, some quarter of a mile southeast from his residence.

Q. Where was it you were ordered to meet that night to go and dispose of the body of Charles Good? A. Some four or five hundred yards from Wesley Smith's house; where they said the body laid.

Q. What was the object of assembling the Klan? A. I only know from the statement given me by Wesley Smith, that it was to render it impossible for anybody in the neighborhood from giving evidence of the fact.

Q. Do you know whether the body has since been found? A. I never heard that it has been found.

Q. Do you know of any other transactions of the Klan from anybody? A. Not from my own knowledge, but Charley Byers, told me he was on one raid.

Q. State what he told you of the operations of the Klan? A. He told me particularly in reference to whipping a colored man near where I lived named Jerry Adams. He discharged his gun over the door of Jerry Adams as he ran, but when they surrounded his house, and he attempted to run, Charley Byers, shot at the door over his head to scare him; that is what he he stated to me.

Q. Do you know of any other transactions of the Klan? That is all I think of at present.

Q. Did you meet any that you recognized as members of the Klan in North Carolina? A. I met a party initiating a Methodist preacher once.

Q. State the particulars? A. When I came up with the party they were initiating him, and they completed the business.

Q. Did he take the oath? A. Yes, sir.

Q. Do you know his name? A. It was James Carpenter; this was in Folk county.

Q. Was the oath the same as you had taken in your Klan? A. Yes, sir.

Q. Were the signs the same? A. Yes, sir; I recognized the men by a sign. They had halted me, and they gave me the sign, and I answered.

Q. Did you know the parties? A. I knew the Prices; they were pedlers; one was called Dick the other was called Skip.

Q. Did you have their constitution and by-laws? A. They had no constitution, only the by laws.

Q. When was that? A. On the 1st of February, 1871, to the best of my recollection.

Q. Did you say that when you joined this organization that you understood it to be one for self-protection? A. Yes, sir.

Q. After you got inside what did you find it to

be? A. That it was an organization in the interest of the Democratic party.

Q. Do you know any other of these defendants?

A. I know Mr. Whiteside, I don't know Mr. Mitchell, I never had any acquaintance with him.

What Klans were stationed near you? A. Two, one was known as the small Klan, the other as the Mitchell Klan.

Q. Is this defendant the Mitchell you refer to?

A. I do not know; I never had any acquaintance with him, at all.

*Cross Examination by Mr. W. B. Wilson.*

Q. You stated the order was to protect yourselves from what? A. There were reports in the county at that time, that there was some danger from the armed militia—armed by Governor Scott, and the order stated to me, that it was to protect ourselves in case of any demonstration by this armed militia.

Q. Were they colored militia? A. Yes, sir.

Q. How many companies of colored militia was armed in York county at that time? A. I heard of so, but don't know if it was armed.

Q. Were there any white companies armed by Gov. Scott? A. None that I know of in the county.

Q. With what kind of weapons were these companies armed? A. I understood they were armed with United States guns.

Q. Did you ever see one of those guns. A. No, sir.

Q. Were there any fires in that vicinity. A. The nearest was Mr. Crosby's gin house.

Q. Was that burned? Yes, sir.

Q. Were there fires from incendiaries in that county? A. Reports were current in the county; more in the northern portion than in ours; I have no knowledge of any of them.

Q. Was the object of this order to protect yourselves from the armed militia, or incendiaries, or other acts of violence? A. To protect ourselves from any acts of violence that might happen, by the armed militia, as I understood it.

Q. Was there any interference with the voters at the last election, 1870? A. I have not attended an election since I came into the State.

Q. You have never met with Dr. Whitesides in any meeting of the Klan? A. I have met him frequently but never met him in the Ku Klux organization.

Q. [By Mr. Corbin.] You say you were told that the object of the organization was as you stated? A. Yes sir.

Q. But when you got inside of the organization did you find it to be different? A. I found the object to be very different, in my opinion, from what they told me, and from the results I knew it to be different.

Q. Did you know of any acts of violence committed by the militia company? A. None of my own knowledge.

Q. Had you ever any reason to fear the militia company? A. I never had any fears of any.

Q. Did you fear the colored people about you? A. No, sir, I never feared any of them.

Q. Was there raiding about the county before you joined the Ku Klux Klan? A. The reports were that there were many raids through the county before I joined.

Q. Were the fires before or after the raiding commenced? A. I cannot be definite about that.

Q. Was there any knowledge as to who set fire to the Crosby gin house? A. None at all.

Q. Do you know that it was attributed to a militia company? I never heard it charged to them.

*TESTIMONY OF KIRKLAND L. GUNN.*

Kirkland L. Gunn, a witness for the prosecution, being duly sworn, testified as follows:

Question by Mr. Corbin. Where do you reside? A. York County.

Q. How long have you resided there? A. I was born and raised there.

Q. In what portion of the county? A. My father lives in the south portion of the county.

Q. What is your age? A. Twenty-one years.

Q. What is your profession and business? A. I am a photographer.

Q. Have you carried on that business in York County? A. I have, sir.

Q. State whether you have been initiated a member of the Ku Klux Klan? A. I was initiated in January, 1871, and became a member of the K. K. K.

Q. Where? A. At Wesley Smith's, near his house.

Q. Did you take the oath? A. I did.

Q. Was the oath read to you? A. The constitution and by-laws were read to me.

Q. Do you remember the oath? A. Yes, sir.

Q. What was that oath in substance? A. It was not to reveal the secrets of the Klan; that the purpose of the Klan was to put down Radicalism, and rule the negro suffrage; [a paper was here handed the witness.]

Q. State if that is substantially what was read to you on that occasion? A. Yes, sir, the obligation is the same, (the witness was here requested to read the paper through,) it is the same that was read to me. The constitution and by-laws of the Ku Klux Klan were here read by the Attorney General in open court.

Q. State the general purpose and object of the order as you understand them? A. I heard them stated to me. It was to put down the Radical party and rule negro suffrage.

Q. How were those purposes to be carried out? A. It was told to me by members of the Klan that it was to be by whipping negroes and intimidating them and keeping them from voting, and to kill all such white men as took Radical offices, and who then occupied offices.

Q. How was the organization armed? A. Some were armed with pistols and some with shot guns, and some with muskets; just whatever was convenient.

Q. What was the Ku Klux gown? A. A long gown made of some dark colored stuff; I never saw one in daylight.

Q. Was that worn on all occasions while on duty?

A. This was my understanding; that it was to be worn on all occasions.

Q. Were these operations to be carried on in the day-light or dark? A. All this was in the night. Whenever the Klan was on duty, they were known and designated by number.

Q. How were they numbered? A. Each man was to be numbered. Sometimes they would begin with No. 1, and sometimes they would begin with five hundred; they would begin with any number they chose, and then run on.

Q. What was the object of that? A. To keep from calling names.

Q. Was it to assist in their concealment? A. Yes, sir.

Q. Who was the highest officer who commanded whenever a meeting was called or when they went on a raid? A. I didn't know the highest officer; the chief was the highest I knew.

Q. What did they call this business of going after colored men and whipping them? A. Raiding.

Q. Did you ever go on any raiding? A. I never was on one; was called to go on two raids.

Q. By whom? A. By order of the chief. I was told so by the person who brought the message. John Wallace was the person who brought me the first message.

Q. Who was the chief? A. John Mitchell.

Q. Is this the man here? [pointing to the defendant, J. W. Mitchell.] A. Yes, sir.

Q. Was he chief of the Klan? A. Yes, sir.

Q. What was the name of the Klan? A. It was called Mitchell's Klan.

Q. Have you frequently seen this person? A. I have met him several times and met him once in the capacity of Chief.

Q. State the circumstances of the meeting. A. I was told by Wallace there was to be a meeting at Barkley's Mill for the purpose of raiding Bill Kell and to kill him for being President of the

Union League. Those were the words Wallace stated to me.

Q. What was Wallace's position in the Klan? A. He was known as a Night Hawk.

Q. How long did you receive this order before the time of meeting? A. I think it was two days before the meeting.

P. Pursuant to that notice did you meet the Klan? A. I did.

Q. State who you met there? A. I met there that person, J. W. Mitchell, Whiley, Ed. Leech, Arney Neil, Chas. W. Foster, Wesley Smith, Jo Smith, Thomas McAllen, and a good many others I knew, but I cannot remember their names now.

Q. How many persons were present at that meeting? A. I should say from 30 to 35 persons.

Q. Were they mounted or on foot? A. They were all mounted.

Q. Were they disguised or not? A. Some were disguised and some were not.

Q. Did you go on that raid? A. No sir.

Q. Why? A. Because Mr. Hugh Kell was there. It was thought he was sent there for the purpose of letting it be known if Kell was killed—that he might be a witness.

Q. Was Hugh Kell a member of the Klan? A. I don't know whether he was or not.

Q. Who brought the disguises there, and who took them away? A. Mr. Mitchell did.

Q. What did he bring the disguise in? A. He brought it in a sack.

Q. What did he carry them away in? A. In a sack.

Q. Did you see him put them in? A. I saw him put one disguise in a sack.

Q. Was there any talk of killing Hugh Kell? A. I heard some one say he was to be killed, but I heard no one say they wanted to kill him.

Q. What did they do finally? A. There were some rough words between Mitchell and Kell. I don't know what they were, but they were rough, from what I heard others say of them. Mr. Mitchell ordered the Klan to go home and wait till he ordered them out again.

Q. Did you know Bill Kell—the man they proposed to kill? A. No, sir.

Q. What other raid do you know of? A. I was ordered to go on one raid on Jenny Good.

Q. Did you go upon that raid? A. No, sir.

Q. Why not? A. I had no saddle to ride.

Q. From who did you receive the order to go there? A. I don't remember now who told me they were going to have a raid.

Q. Who did he say he gave orders to for that raid? A. Charles Byers.

Q. Was that Klan located near you? A. About two miles from where I was.

Q. Who were the two chiefs of the Klan residing there? A. Byers and Mitchell.

Q. Did they order out the members of the other Klan? A. They would invite the members of the other Klan to go with them—not order them.

Q. Were you invited to go on that raid? Yes, sir.

Q. How many members were there in Mitchell's Klan? A. I don't know.

Q. Have you any means of knowing from those you saw? A. I don't know; there might have been members of other Klans.

Q. How many men were there in Charley Byers' Klan? A. I think sixteen or seventeen; I don't remember the number.

Q. Do you know of any other Klan in that vicinity? A. I do not, but have heard of others.

Q. Did you ever recognize a person by the name of Squire Sam Brown as a Ku Klux? A. I have, sir.

Q. Where? A. At Wiley's store.

Q. How did you recognize him? A. By a sign.

Q. What sign did you give him? A. Passing the hand over the right ear, he answered by passing his hand over his left ear.

Q. What conversation, if any, did you hear there from Samuel Brown? He and Wesley Smith were standing, and they had been engaged in conversation. Smith stood up and Brown gave him that sign; then he turned to Smith and asked respecting me, is this man all right. Then he said you know I would not

have such business, without having men that were all right. Then after some further conversation, I heard him say, I can go and take my Klan, and whip more damn niggers than any other Klan in York county.

Q. Where does Squire Sam Brown live? A. I don't know. I think it is west of Yorkville.

Q. Do you see that gentlemen in court here? A. Yes, sir, there he sits [pointing.]

Q. State what were the signs and passwords of the order, and how they use them on occasions? A. One was passing the right hand over the right ear; this was answered by passing the left hand over the left ear; the next sign was putting the right hand in the pocket of the pants, leaving the thumb to be seen; if you wished to find out if a person belonged to the organization he returned it with his left hand in the same way; the next sign was putting the heel of the right foot in the hollow of the left; this was answered by putting the left heel in the hollow of the right foot.

Q. What were the passwords? A. If you met a man or a party you would say, "S-a-y, who are you?" This was answered by, "N-o-t-h-i-n-g," without pronouncing the word.

Q. Have you frequently met and recognized members of the order by these words? A. I have met them by signs, but not by words.

Q. Had they a grip; if so, explain it? A. In grasping the hand the little finger would go between the fourth and little finger of the hand you grasped, and the forefinger would stretch up and touch the wrist.

Q. Have you frequently exchanged that grip? A. Very often, sir.

*Cross Examination by Mr. Wilson.*—Q. Have you any knowledge of Dr. Thomas Whitesides' being a member of this order? A. I do not know that he is a member.

Q. Have you not reason for knowing that he is not? A. I have given him signs and he did not return them. Q. You tried then by giving him the signs and he did not answer? A. Yes, sir; I gave him signs and he did not respond.

Q. What sign did you give him? A. Passing the right hand over the right ear.

Q. Have you any other reason for knowing he is not a member? A. I heard him say it was the most damnable thing in the country.

Q. By Mr. C. D. Melton. What are the relations between you and Mr. Mitchell; are they those of friendship or otherwise? A. As to my feelings they have always been those of friendship.

Q. There was some cause of misunderstanding, was there not? A. Not on my part. I had my photographic instrument in the church, that he had something to do with, and he told me to take it out, but it caused no hard feeling on my part.

Q. Had you any conversation on the subject with Mr. McKeow? A. I have no recollections of it.

Q. You say you never used any harsh language? A. No, sir, none.

Q. And never had any unkind feelings towards Mr. Mitchell? A. No, sir. I had none.

Question by Mr. Corbin. When do you say it was that you recognized Mr. Whitesides was not a member of the order? A. I think it was last March.

Q. Had you any special conversation about the Ku Klux order? A. Yes, sir, he said something about the Ku Klux; he had some negroes that they visited, and he and his brother went to try to pacify them; he said it was the most damnable curse, or the most damnable affair in the country; I then gave him the sign, but he did not respond.

#### TESTIMONY OF CHARLES W. FOSTER.

*Direct Examination by Mr. Corbin.*—Q. Where do you reside? A. York County.

Q. How long have you resided there? A. Ever since the war.

Q. Where did you live prior to the war? A. I was in Georgia during the war.

Q. Were you a soldier in the Confederate service? A. I was, sir.

Q. Do you know these defendants? A. Yes, sir; Mr. Whiteside and Mr. Mitchell, I do.

Q. Where do they reside? A. In York County.

Q. How long have you known them? A. I have known them a good while.

Q. How many years? A. I have known them ever since I was big enough to know anything. Dr. Whiteside and myself were partly raised together; his father had a plantation near to my father's.

Q. How long have you known Mr. Mitchell? A. For the last twenty years.

Q. Where did you know him? A. In York County.

Q. In what regiment were you a soldier? A. In the 1st Georgia Regulars.

Q. Did you know Capt. Mitchell in the army? A. Only from what I heard.

Q. Have you been a member of the Ku Klux Klan? A. Yes, sir.

Q. When did you join it? A. About the 15th day of last September.

Q. Where did you join it? A. Near Mt. Vernon Church.

Q. What portion of the county is that? A. It is in the upper part of York county.

Q. Who initiated you? A. Herod Neale and James Howard.

Q. Did you take the oath when you were initiated? A. It was something, I don't know whether it was an oath.

Q. Can you state the substance of it? A. The first was that we should protect the women and children, and put down Radicalism; whip and kill out those leading characters—white and black—that belonged to the Radical party, if there was any resistance. I remember that part of it very well.

Q. Which part of it? I think it is about the same, as well as I can remember it.

Q. Did you ever hear the constitution and by-laws read? A. Yes, sir; I have heard them read several times, but I didn't pay a great deal of attention to it.

Q. Do you recollect whether each member was required to arm himself with a pistol, Ku Klux gown and signal instrument? A. Yes, sir.

Q. Do you remember whether it was an article, also, that no colored man should be admitted in the organization? A. There was none allowed, sir, in the organization.

Q. Will you state what this K. K. gown was? A. It was a gown that I had—a soft red—and a sack came over your head and a string to draw around your neck.

Q. What was the object of it? A. It was to disguise yourself.

Q. When was it to be worn? A. Whenever you went on raids.

Q. What was the signal whistle? A. It was composed of some kind of metal, made a very loud, shrill noise, and was used to give signals with.

Q. Used when? A. Used when you were going on meetings and raids generally.

Q. Were the names of the Klan called, when orders were given on raids? A. There were no names to be called above a whisper.

Q. Were voices to be disguised or not? A. Yes, sir; their voices were to be changed; that was particular.

Q. What was the object? A. To keep from being found out, I suppose.

Q. What style of talk or language did they adopt usually for concealing their voices. A. Some talked Irish and Dutch. They had all kinds of talk to change their voices.

Q. Whether you in pursuance in the object of the Klan went upon raids yourself? A. I was, twice, sir.

Q. Which raid first? A. I was on the raid first—on the night of the ninth of last January.

Q. Who was present on that raid? A. There was Captain John Mitchell, Joseph Mitchell, Milton Watson, Wm. Good, Robt. McCreight, Charles Byers, John Davis, T. B. Whitesides and said to be Pinkney Webster, leading Parker's Klan from the other side of the river, in Union.

Q. Those men named first were members of what Klan? A. Said to be members of Bleasor Parker's Klan.

Q. But those on this side? A. Members of John Mitchell's Klan part of them were.

Q. Was it this John Mitchell [pointing to the prisoner]? A. That is the man, sir.

Q. You mentioned Dr. T. B. Whitesides? A. Yes, sir. Q. Is this the man [pointing to the prisoner]? A. He was present that night; I left Melton Watson's house

with him and Melton Watson, and went on before them and got my saddle, and met them on top of the hill, between my house and Mr. Smith's place.

Q. And then went with them to the place of rendezvous? A. Went to the ferry and waited for the Klan.

Q. You saw Dr. Whitesides without his mask on? A. I did, sir, before he put it on.

Q. Did you see Captain Mitchell without his mask on? A. No, sir, he had his mask on the night when he came to the ferry, but I recognized him; there was a general talk all through to each other.

Q. How did you recognize him? A. By him coming up, and others asking who he was; some said it was Captain Mitchell, and some said Joe Mitchell was along in the same party.

Q. Who commanded? A. Webber took command, sir.

Q. How many were in the party before you started? A. After we met at the Ferry?

Q. Yes, sir. I think they numbered twenty.

Q. Where did you go first? A. They went first to Rowland Thompson's place, on the same road, and Webber he ran into Pressly Holmes there, and kicked down the door; jerked him out of bed, took him up to the old store, made him strip off his shirt, and whipped him pretty bad. I heard Mr. Smith say, a few days after, that he was sorry enough for the nigger to cry, if it would have done any good; that is John Smith, at Rowland Thompson's plantation.

Q. What was the next place you went to? The Court. Let the witness detail all the circumstances.

Q. Tell me the particulars of that whipping? A. They whipped him.

The Court. How did they get him out of bed? A. I did not see them; I saw Webber when he got out of the door; he had him by the arms.

The Court. Anybody else there? A. Yes, sir; the wife and daughter.

Q. Tell us all about it? A. Taken him up to the store.

Q. Well, what was said and done? A. I don't recollect what was said, only they were going to whip him about some remarks he had made, about being buried in a white person's grave yard.

Q. Anything else talked about? A. I think they whipped him and made him give the Union League signs; they said he was a member of the Union League, and he had been attending some meeting of the League.

Q. Anything said about his having voted the Radical ticket? A. They told him not to vote the Radical ticket any more, to let politics alone; the white men always have ruled this country, and they intend to do it.

Q. Anybody present except the Klan? A. No one as I know of.

Q. Do you know who did the whipping? A. I do not.

Q. Where did you go next? A. Went then to Widow Thompson's place, to the Beauty Spot.

Q. What was done there? A. They had taken out a boy there by the name of Jerry Thompson.

The Court. What do you mean by that? A. They knocked down his door, and took him out doors, and whipped him; they also broke his gun. They whipped him severe; I think they made him strip off his clothes.

The Court. What with? A. Cowhides and hickories.

Q. How many whipped him? A. I do not know how many.

The Court. More than one? A. Yes, sir; three or four—maybe more.

Q. Take turns? A. They whipped pretty much all at one time, some of them, and at last they ceased off.

Q. What did they talk to him about? A. About some threats he had made against an old soldier.

Q. What else? A. Something about his politics, I think.

Q. Do you recollect what was said? A. I cannot recollect, sir.

Q. Do you recollect what his politics were? A. I do not. It was generally supposed, though, that he was a Radical.

Q. You understood that you were doing this in pursuance of the purpose of the Klan? A. Yes, sir; that was my understanding.

Q. Where next did you go? A. We went then to Mr. Moore's plantation and taken out Charley Good

They whipped him and beat him. I saw one man with a stick nearly as large as my wrist, and some was kicking and some whipping, and they came very near killing him.

Q. What did they say to him? A. They told him to let politics alone; that they understood he was an officer in the Union League.

Q. Was this the man who was subsequently killed? A. Yes, sir. I heard afterwards he was killed.

The Court. What time of night did you go there? A. I suppose it was about 1 o'clock, may be later.

The Court. Was the man up? A. No, sir, he was in bed.

The Court. His family? A. Yes, sir, as far as I know. I did not go in his house myself.

Q. Anything else occur there more than what you have stated? A. Well, there was a boy by the name of John Adams run out, and they taken after him and shot at him; he was a colored boy.

Q. Who fired after him? A. I don't know who; it was done by the party, I think.

Q. Did they hit him? A. I think not, sir.

Q. He escaped? A. No, sir; they overtook him, but didn't do anything to him; at least, I didn't see them hurt him; they went up then to Maddison Smart's and taken Charles Leach out, a colored man, and gave him a dressing.

Q. What did they whip him for? A. About his politics.

Q. What did they say to him? A. Told him he was a member of the League, and must let it alone. I heard one man ask him; says he, had you rather take a hundred lashes, or be killed; and he said he would rather five hundred lashes.

Q. Did they go to work and lash him? A. They gave him about fifty lashes I think, with hickories and cowhides, probably a whip attached to it.

Q. Say anything about his politics? A. Told him to let Radicalism alone.

Q. Then what next? A. Went then and whipped a boy by the name of Amos Howell.

Q. Where did they find him? A. In his house, sir.

Q. How did they get to him? A. I didn't go into the yard; they were coming out with him when I came up; I was in the rear; I came up to the lot and stopped; they didn't whip him very much; they gave him, I think I heard somebody say afterwards, about fifty lashes.

Q. What did you hear them say to him? A. I didn't hear the conversation; they taken him off from me some seventy-five yards.

Q. You heard the beating? A. Yes, sir; I could hear the blows.

Q. Where did they go next? A. They dispersed then and went towards the ferry, some of them.

Q. Whom did you go home with? A. I think Dr. Whitesides, Milton Watson and myself, went together as far as my house.

Q. Where did you take off your disguises? A. Well, I don't recollect where.

Q. Were the parties all disguised during this series of whippings? A. Yes, sir; well, there was two or three that took off their disguises and went down to Henry Thompson's quarter; I think Charley Byers, John Davis and Joe Smith, when they were going home.

Q. Did you take off your disguises? A. I don't recollect whether we had taken them off before we got home or not.

Q. You saw Whitesides after he had taken his off? A. No, sir, I don't think I did; I think probably we went home with our disguises on, or near home.

Q. Have conversation all the way home? A. No, sir, I don't think we had much.

Q. Did you talk with him at all on the way? A. He and Melton Watson, I think, were riding before, and I was rather behind.

Q. You knew him perfectly well? A. Yes, sir, I knew him.

Q. Perfectly certain of it? A. I was certain that he was the man that left the house with me.

Q. Where did he stop? A. He stopped at Melton Watson's; his family was down the same night.

Q. How long were you out that night? A. I was out nearly all night.

Q. Left home at what time? A. About nine o'clock.

Q. Returned when? A. Returned about four in the morning, I think.

Q. Did John Mitchell go with the crowd all the way through? A. So far as I know he did, sir; I didn't see him with his disguise off; don't know any more than what they told me at the ferry.

Q. Did you hear his voice that night? A. I think I did, sir; I cannot say positively that I did; but it was told me. I don't recollect whether we had any conversation or not.

Q. He was the Chief of the Klan? A. Said to be, sir; yes, sir, I saw him when he was elected chief of the Klan.

Q. Where was that? A. In the old field, near Mrs. Wright's brick house.

Q. When? A. I don't recollect the date; it was before Christmas.

Q. How long before Christmas? A. It was not very long before Christmas.

Q. How many members were there? A. I cannot tell you; there was some seven or eight, or may be more.

Q. Was there an election held? A. Yes, sir.

Q. And he was elected chief? A. He was elected; there was two men running for chief, and Captain Mitchell was elected.

Q. How long did he continue chief of that Klan? A. I don't know, sir; through the winter, I suppose. I never saw him on any other raid than that. I saw him at the meeting at Markley Hill, as Mr. Gunn stated.

Q. When was that? A. I don't recollect the date.

Q. What was that meeting for? A. Well, sir, it was told to me that it was to whip or kill Bill Kell. The evening before, sir, I had a conversation with William Kell's brother, and I was talking to him, and I had told him I had warning to go on a raid on his brother, and I wanted him to go with me to sympathize for him. I found out afterwards that Mr. Kell had not belonged to the Ku Klux; that he had got into some of the secrets; but he gave me the signs and I returned them. I heard it rumored in the meeting that it was broke up by me and Mr. Kell being there.

Q. What did you understand they were going to kill Bill Kell for? A. About politics.

Q. What politics? A. Radical.

Q. What was his position in reference to the Radical party? A. He was a great leader in the Union League—said to be.

Q. And he was to be killed for that? A. I suppose so—killed or whipped. I heard threats made about Hugh Kell's being there. Edward Leach told me, and Madison Smart told me, that I had better tell Hugh Kell to get into the order; if I didn't, both of us were in danger.

Q. Were those gentlemen members of the order and present that night? A. Yes, sir; so far as I know, they were.

Q. Did Hugh Kell go into the order? A. After that, he went to Squire Sam. Brown's son—I don't recollect whether it was Chambers or Pete Brown—and got him into the organization, and he came down with Mr. Brown to Watson's, to let the members know that he belonged to the order.

Q. You saw him there? A. I didn't see him there, but Mr. Watson told me afterward that Kell was all right.

Q. That wasn't the question. That was Melton Watson? A. Yes, sir.

Q. Is he the man you have spoken of as being on that raid? A. Yes, sir.

Q. Now, your second raid? A. The second raid, we met in the old field below Dr. Whiteside's house.

Q. Who were present? A. There was a good many, I think there was to the rise of twenty; may be not so many.

Q. Name as many as you can? A. Julius Howe, Geo. Leach, Jeff. Smith, Joseph Mitchell, Joseph Smith, Harris Wiley, Ches. McKinney, Gaffney, Murphy, Porter, and several others that met there; some had on disguises when I got there and some none, and waited for Howe and Joseph Mitchell to bring the disguises after they had all dressed. There was no disguise for Harris Wiley, and he went home. We went to Dr. Whiteside's house and saw Whiteside and his family, and saw Whiteside and his family standing on the piazza.

Q. Did you speak to him? A. No, sir.

Q. Did he join the Klan that night? A. He did not.

Q. Go on. A. Went there and stopped at Mrs. Watson's for some purpose, I don't know what; they did not do anything. They went to Mr. Moore's quarter; there they got a double barrel shot gun, and taken it out and broke it.

Q. From whom did they take it? A. From a colored man, I don't know his name.

Q. Old or young colored man? A. I didn't see the man.

Q. Why did they take it? A. I don't know, sir. I heard no reasons. Went then to Mr. The Byas'; they did not do anything; they were hunting for a boy by the name of Alf. Cassidy.

Q. Why did they hunt for him? A. They want and some broke down the doors, and some opened the doors for them, and went in and got lights and looked over the house.

Q. Did they do anything to the women? A. No, sir; but they searched the house and didn't find any one.

Q. What did they propose to do with him? A. I heard no proposals at all.

Q. What were they going to visit him for? A. I don't know, sir.

Q. Go on. A. They went down then to Chancellor Chambers', where they called on an old man and got an Enfield rifle. I think it had been cut in two.

Q. Who was the colored man? A. I don't know him.

Q. Did they intend nothing with him? A. They made him give up his gun; also, made him break it himself.

Q. What did they say to him? A. I don't recollect. I did not hear the conversation.

Q. They had a conversation with him? A. I suppose so.

Q. How long did they stay with him? A. Not more than ten or fifteen minutes.

Q. What next? A. They went then on down to, I don't know whether it was The. or Edward Byas' place; where Adolphus Moore lived and another colored man there, and they taken both of them out and whipped them.

Q. Do you know their names? A. One was named Adolphus Moore and I don't know the others.

The Court. Tell me exactly how they did it? The first and then the second? A. They first went to Adolphus Moore's house, he told them that he was sick, and he did not feel much like going out or something to that amount; and they took him out any how, into the yard; I heard some remarks made on him about swearing against I've Leach and George, something that occurred in 1868, some Ku Kluxing that was done then.

Q. Now what did they say to him? A. They told him never to swear against a white man again.

Q. What else? A. Don't recollect what they said.

Q. Did they talk to him about his politics? A. I think they did.

Q. Can you remember anything about it? A. I cannot.

Q. You remember that something was said? A. Yes, sir; it was generally done.

Q. What did they do to him? A. They whipped him about one hundred and fifty lashes with a hickory.

Q. What did they do to him then? A. I don't recollect.

Q. Let him go? A. Let him go.

The Court. Q. What condition does this leave those people in—could they walk? A. Yes, sir; this boy could.

The Court. Q. Did you see his back? A. I did not see it.

Q. Did they whip him on his bare back? A. Yes, sir; they made him strip off his shirt.

Q. Make him lie down on the ground? Q. No, sir; he stood up.

Q. Did anybody hold him? A. He stood, as still as he could stand.

Q The crowd circulated around? A Yes, sir; they were generally crowded around.

Q When you whipped a man, the crowd stood around? A Yes, sir; so thick that he could not escape.

Q Now tell us the circumstance about the other—how they found him and whipped him? A They found him in bed, and they taken him out—I think some of his folks opened the door—and they gave him about the same number of lashes, with hickories.

Q Where was he? A Right in front of his door, in his yard.

Q Did the crowd circle around him? A Yes, sir.

Q How many whipped him at a time? A I don't recollect—two or three—three or four, may be.

Q What did they say to him? A I don't recollect what they did say to him.

Q Do you recollect whether they talked to him about his politics? A I don't know, sir; I don't recollect.

Q What was his condition when you got through whipping him? A About like the other—gave them both about the same.

Q What did they do with him. A Told him to get up and behave himself, I think. The Court. Where was his family? A In his home.

Q Within hearing? A Yes, sir, it was not more than ten paces from his house.

Q Did he cry? A Yes, sir, he begged.

Q Where else did you go to? A Went then down past Edward Byers'; there they joined part of another Klan, said to be Will Johnson's, the Rattlesnake.

Q How many in that Klan? A Seven or eight.

Q Who was in command? A Said to be Will Johnson.

Q Mounted, or not? A Yes, sir, mounted and disguised, and some had pistols and some had guns.

Q Where did you go then? A Went then down to Mrs. Stinson's, and they whipped this boy, Sam Moss, because they had heard he had made some threats.

Q What kind of threats? A That he allowed to lie with his axe at his door, and the first Ku Klux that came in, he allowed to kill him. They went and knocked down his door, and called him out and whipped him a little; didn't hurt him, though.

Q What conversation did they have? A Told him never to make no more threats.

Q Did he promise? A He promised he would not.

Q Did they repeat to him the threats? A I think they did.

Q Did he admit them or deny them? A He denied them.

Q Talked to him about anything else? A I don't think they did.

Q Where did you go next? A Went then to the Nangle place. They whipped a couple there, one named Alex. Leych and one named Henry Moss.

Q State all the particulars. A They went to Alex's house first. He was crippled in one foot, and they made him walk up to Henry Moss' house, and got them both and took them up to the old field and whipped them pretty severe with hickerys and cowhides.

Q. How many lashes did they give Alex? A. I suppose one hundred lashes.

Q. How many whipped him at a time? A. One and two at a time, I think.

Q. Did they circle around him? A. Yes sir, all around him.

Q. His clothes off? A. His shirt off sir, and tha whipping was upon his bareback.

Q. Has Alex. Leach since been killed? A. Yes sir, I heard he had.

Q. By the Klan? A. I don't know who killed him.

Q. How long after that was he killed? A. I don't recollect. This was on the 29th of June, as well as I can recollect.

Q. Do you know what he was killed for? A. No sir, I do not.

Q. Were you on this occasion in pursuit of your usual business of the Klan? A. Yes, sir, that was generally supposed to be the usual business; that was my understanding.

Q. Did they talk to him about his politics? A. I think they did—told him he must not be a Radical any more.

Q. Did they use the word "voting"? A. I think they did, sir.

Q. What did they say about voting? A. Told him not to vote the Radical ticket any more.

Q. Now about the other man? A. Well, I don't recollect, sir, what they said.

Q. Did they whip him the same way? A. Yes, sir, but not so severe.

Q. Did you say what his name was? A. Henry Moss.

Q. Whip one, right after the other? A. Whip, ped them both about the same time.

Q. Two whipping parties? Yes, sir.

Q. You didn't hear what they said to him? A. No, sir, I didn't pay any attention.

Q. What did you do next? A. Went on then to Wilson's, a colored man.

Q. What did you do with him? A. They went into his house?

Q. How did you get in? A. I think some of them broke the door down, or kicked it open and found him in there.

Q. Who brought him out, or how was he brought out? A I don't recollect; but I think there was two or three men ahold of him and brought him out; maybe, more.

Q. What did they do with him? A They carried him out in the yard and whipped him a little, and made him give the League signs.

Q. Talked to him about his politics? A Told him he must leave the League meetings alone and not vote the Radical ticket any more. I don't know whether they succeeded in getting the League signs or not; but I don't think they did, when the party dispersed. It was said that the other Klan whipped him severe. I heard Mr. Knease say that Will Johnson came very near killing this boy. He said it was all they could do to keep him from killing him.

Q. What time did you start out that night, and what time did you return home? A We started away from the old field about 9 o'clock, I suppose, and I returned home about 4 o'clock in the morning, or a little after.

Q. That was considered, a good night's work? A Yes, Mr.; they went on then below Wilson's, on the same road, after a boy by the name of John Thompson, usually called; (you may have his name different); and they did not find him; that Mr. Wilson was in the House. His wife had been confined that evening at 5 o'clock, and Mr. Wilson was there—that was William Wilson, a white man. I heard shooting down at his house, and ran down there; and they had surrounded his house when I got there, and I suppose that they had killed his dog (I heard afterwards that the dog was killed), and they were in the act of going into the room where Mrs. Wilson was,



and me and Will Leach kept them from going in. Harvey Hamwright, a step-son of Mr. Wilson's, begged them not to go in on his mother, and they told him to bring him out. They brought him out, and I think he stood on the second or third step, and they took him—I think Will Johnson did—and told him he was a damned big, fine Radical—he was mighty nigh fat enough to make soap grease.

Q Did they talk about his politics? A Yes, sir; they told him to let the Union League alone, and also told him if there was any more burning done in ten miles of his house, they allowed to take his life.

Q What did he say to that? A I don't know what he said; he didn't have much to say, no way.

Q You were acquainted with him? A I am personally acquainted with him.

Q How long have you known him? A Ever since the war. They dispersed then, and the "Rattlesnakes" went one way and the Tigers went the other. They gave them the name of "Tigers" that night. On the other side of Bullock's Creek they took off their disguises. I think Joseph Mitchell took the disguises and put them in a sack.

Q Who is he? A Son of Captain John W. Mitchell.

Q Son of the prisoner? A Yes, sir.

Q Who commanded your Klan that night? A Julius Howe. When they joined the two Klans together he commanded.

Q How do they determine who is to command when two Klans come together? A I don't know how they determine that thing.

Q Is there any ranking of the chiefs? A I don't think there is.

Q What next? A We went home then.

Q These were the only two raids you have been on? A The only two. I was in two or three meetings; in the meeting on Barkly Hill, to go on Bill Kell.

Q Was Dr. Whitesides at that meeting? A No, sir; he was not.

Q On what occasions have you seen Dr. Whitesides with the Klan? A I never saw him any time only the one time; I and him had a conversation after that, and he said it was one of the most outrageous things in the country.

Q What was? A This Ku Klux Klan—it was running all his hands off, and he would be obliged to suffer if they didn't stop it. He said he was opposed to it.

Q Did you talk to him about being on that raid? A Yes, sir. Q What did he say? A He didn't have much to say about it. I suppose it was his first raid, and he was like a good many others, disgusted with it.

Q Have you had any conversation with him since he has been arrested? A Yes, sir; I had a conversation with him in prison—in Yorkville, he sent to me to come on the third floor where he was, by Sergt. Corbin, that he wanted to see me, and he said that I could let him out of that thing very easy if I would do it; and it passed off that way.

Q What did you tell him? A I don't recollect, what I told him; anyhow, in a few days after that Dr. Whitesides sent my cousin Macarchin down on my floor and said that he would give me twenty-five dollars, if I would go and let him out of it.

Q Who said that to you? A My cousin.

Objection—objection sustained.

Q Did you go and see him? A No, sir; not after that—only as I came out of prison.

Q When was that? A On the 27th of last month.

Q What conversation did you have then? A He hollered to me, and told me to go and fix that thing.

Q What thing? A The thing that he offered me—twenty-five dollars.

Objection to.

Q Where was he when he hallooed? A He was in prison, and I had been released.

Q How were you released? A On bail, sir. I returned home that night, and came back to Yorkville on Saturday, and Squire Clawson sent word for me to come up to his office, and asked me if there was not a misunderstanding between me and Dr. Whitesides. I told him there was none, and he said that was all the business he had with me; and, also, Major Hart sent for me to come to his office, and I went, but I don't recollect the question he asked me.

Q Anything about Dr. Whitesides? A No, sir, I think not.

*Cross-examination by Mr. Wilson.*—Q Did you ever state while in the prison, in the presence of several of the prisoners, whom I will name, that you were satisfied that you were mistaken in including Dr. Whitesides' name among those that went on the raid that night, and that you intended to go to Col. Merrill and correct the mistake? A I did not, sir.

Q Did you, while you were in jail, before you were released, mention it in the presence of John Miller, of W. C. Whitesides, of Robert Riggings, of Hayes Mitchell and John Mitchell? A I did not, sir.

Q Did you, when Dr. Whitesides called to you, as you have just stated, to go and fix that thing—did you say, in the presence of John Miller and of W. C. Whitesides, or in their hearing, "I will go at once and correct it?" A Yes, sir; but you understand my meaning about this.

Q Did you say, I will go to Major Merrill at once and correct it? A I stated I was ordered to report to Major Merrill, and I would go at once.

That was your reply to the question; do you remember using the words: "and correct the mistake?" A I remember using the words that I was going to Major Merrill's headquarters.

Q Did you use the words: "correct the mistake?" A I don't know whether I did or not.

*Cross Examined by Mr. Mellon.* Q On what night did this raid upon Charles Leach occur? A It was on the ninth of January.

Q Of the present year? A I think so.

Q Do you recollect what day of the week it was? A I cannot say.

Q Do you recollect what day of the week the first of January come on? A I cannot, I was only told since I came here; that it was on the ninth of January.

Q Do you recollect what day Christmas was, last year? A On the twenty-fifth day of December.

Q On Sunday or Monday? A On Sunday.

Q Then the ninth was on Monday? Where did you see Mitchell on that night? A At Howell's Ferry.

Q You say that when you were at Howell's Ferry you saw John Mitchell? A Said to be him, he was in disguise as I said before.

Q I have understood you to say, however that as far as you at present recollect you had no conversation with him? I don't recollect having any, sir.

Q You are certain now of the night when this raid was on Charles Leach? A I am not certain I

have only a boy's word of it that was whipped.  
Q Do you certainly know that on that same night Press Holmes and Jerry Thompson and Chas. Good and Amos Howell were whipped? A Yes, sir I do; on the same night.

When did you join this Klan? A I joined before Christmas.

Q Mitchell's Klan you mean? You have not spoken of any other? A I joined a different Klan sir; and then there was a meeting when Captain Mitchell was elected Chief.

Q That was before Christmas? A It was before Christmas sir, as well as I recollect.

#### TESTIMONY OF HENRY LATHAM.

Henry Latham, colored, was the next witness called for the prosecution. He was duly sworn and testified as follows:

*Direct Examination by Mr. Corbin.*—Q. Where do you live? A. Mr. Wm. Shearer's plantation I was living. Q. In York County? A. Yes, sir.

Q. Did the Ku Klux Klan ever visit you? A. Yes, sir.

Q. When was it? A. It was before cold weather got done,—before we planted corn.

Q. Sometime last winter? A. Sometime in the winter.

Q. Tell the jury all about it? A. I heard them before they found me, down at Mr. Rauahy's, and I tried to see if I could escape them; they was shooting down there, and I thought I would try to dodge them. I couldn't get up well on account of the rheumatism. But they seed me; they was too smart for me. I went out and watched by hickory tree; and when I got tired of watching I mashed up some old wood and took it in, and they coming on me.

Q. Who came on you? A. Mr. Shearer.

Q. Who else? A. There was all the Shearer's came in; Mr. Riggings, I don't think that he came in, but his horse was there when they set down with me.

Q. How many were there? A. Seven in the crowd.

Q. All come in. A. No, sir, didn't; but—

Q. Tell us what they did to you? A. They came in; they cussed me.

Q. Tell us what they said? A. They said "God damn you, who are you?" I says, Henry Latham, sir; "who is he?" I says Henry Latham, sir; then I looked at one at the window and saw his red eye, and he jobbed his pistol in my face, and says, "who are you?" and I told him Henry Latham, sir, and acted as well as I could to keep them from killing me. Robert Riggings told me he was going to make me a good old Democrat; that was the first of it. Mr. Riggings said he was going to make me a good old Democrat; I says you can't do it; he says, "well you'll see;" I says, how will you do it? He says "I am going to fetch a crowd and shoot in your house and make you a good old Democrat." I says no, don't do that Mr. Riggings. He says "I will do it some other way." I says how? "never mind, you'll see." That was 'a'ong in the middle of the week before they whipped me.

Q. When was it that they came to see you? A. Saturday night; and when I heard them I knowed I would catch it. I wasn't able to run, and I went and got behind a tree. Well it was too cold; I couldn't lay out at night, and I thought I would dodge back into the house and be easy, and sit down and mash up the old wood and put it on, and just as I put the last stick on, he jobbed me with his pistol and says, "who are you? God damn you, who are you?" I says, Henry Latham, sir; "God damn you come out of there." Yes sir, and I followed him up and got to the fence, and before I got to the fence he says, "he would cut my God damn throat." I thought now if I prayed a little bit, I wouldn't been uneasy. When I throwed my leg up to get over the fence, the pain hurt me so I hollered. "What ails you, God damn you?" I told him that it was the rheumatism. Well, he says, "God damn you come over here, I will take that out of you," and kicked me and turned my bone wrong in here, [indicating the spine].

Q. How many times did they kick you? A. I cannot tell; they kicked me and told me to run; well, I tried to run all I could, but a man full of pains can't run much; I wouldn't speak of them, no way, out of the way; I just grunted when they kicked me.

Q. What did they do with you up the road? A. They beats me with poles about that thick [pointing to his wrist]. They had long ones, and hit me in the same place where they kicked me.

Q. How many times did they strike you? A. I don't reckon more than six or seven times apiece; five of them hit me, but there was seven in the crowd; they didn't give me but, I don't think, more than six or seven apiece; they asked us if I would ever vote another Radical ticket, and I told them no, sir, if that was the way they did, I wouldn't ever no more; they asked me if I was a League man; "Well, show me a League sign, God damn you," I caught myself right here [the left lapel of the coat.] Mr. Kell, he was a Radical man; he put us all into the League; and they said, "God damn you, what did you join it for?" I said I didn't know there was any harm in it; "Well, God damn him, give him hell," and then they begun.

Q. After they got done whipping you how did you feel? A. I felt very bad.

Q. What injury did they do to your spine? A. They turned the bones wrong side out; well, I never got over it; I don't know as I ever will; they kicked the bones wrong and injured the bone; they told me to run when I started back, and I went to get my coat, and they kicked me in the same place again, and I caught my coat in my fingers and hung on to it and run with it, and while I was running they run the horses up to keep me from knowing the horses; Dock Shearer's horse, Bob Riggings's horse—I knowed the horses; I had plowed Bob Riggings's horse.

Q. Did you go home? A. Yes, sir; they told me, God damn you, go to the house, when I started to pick up my coat, they said run, and while I was running, they run the horses.

The defence waived, cross examination.

#### TESTIMONY OF JERRY CLOWNEY.

Jerry Clowney, colored, was the next witness called for the prosecution, he was duly sworn, and testified as follows:

*Direct Examination by Mr. Corbin.*—Q. Where do you live? A. I live in Yorkville.

Q. How long have you live there? A. Ever since the first of March.

Q. Where did you live prior to the 1st of March? A. Lived on Judge Beatty's plantation.

Q. How far from Yorkville? A. Four miles.

Q. Now tell the Court and jury whether the Ku Klux Klan visited you, and if so, what they did to you; tell us all about it? A. They came to my house on the 25th of January, at night.

Q. What time of night? A. About one o'clock, between twelve and one, I think it was about one.

Q. Did they have disguises on or not? A. Yes, sir.

The Court, let him tell his story.

Q. Tell your own story in your own way? A. I don't know what for, or how they came to the house, for I was asleep, sound, after a while in my sleep I heard a mon-strous noise all around the house, I rose up in bed, what is this, says I old woman, what is this? She bounced up. Oh I don't know, says I, I don't know what it is neither. They went on knocking, and they had a song that they sung; it had but mighty few words: "Ho man, home to-night? Ho man, home to-night! Ho man, home to-night!" [Laughter.] You laugh so much, I can't tell you.

The Court.—Go on; never mind acting it out.

The witness.—I lit out of bed on the floor—they was still a knocking and hollering—I had one little loose plank in the middle of the floor,—a little cellar that I had—says I "old woman, these are keeping" and I raised up the plank a little piece, and it struck me immediately that my sills was close to the ground and I couldn't crawl out under—that was my aim—I dropped the plank back again and raised it up, but then as soon as I raised it up, there was one of the men outside had a board—I had a board nailed across the crack and he had it punched off; the board dropped inside, and he peeped in and saw me—the moon was shining—and he run the muzzle of his gun through the boards and says, "God damn his soul, I see him!" says another "if you see him, shoot him down." Oh no, I says, don't shoot me. "Well, then, open the door, God damned quick." I opened the door. Here come in the old devil, shaking his horns, and walked up to me. "God damn your soul; you have got a gun here— you damned rascal, you." Says I, yes, sir: "where is your gun?" Says I, there it is on the wall. Two jumped and grabbed the gun, at once, and carried it out of the door. As soon as ever they got out into the yard with it, the Captain was standing by me with his horns—

I call him Captain, because he had his horns on his head. "Now, God damn your soul, I want you to tell me, you God damned rascal, what is you doing with a gun, here." I wasn't doing much with it. "What little was you doing with it, you damned rascal?" Says I, I belong to the militia, and I have been mustering a little and drilling. "Where have you been drilling?" Down at Yorkville. "I know nothing at all about your God d-d Yorkville." Says I, it ain't but four miles from here. "I know nothing about four miles, nor Yorkville, God d-n your soul; and you have been drilling?" Says I, yes, sir. "Well, God d-n your soul, I intend to drill you to night," and he hit me—as the witness spoke he fell full length on the floor. Here is a great big scar here on my head yet; he opened my skull there pretty wide; the blood run in a stream like you stick a hog. He went out after he struck me that first lick. I was standing holding my head, the blood running on the floor, and a man came to the door—"Why, God d-n him, we'll have to hang him." Says I, No, please don't hang me." They didn't give me time to walk; just chucked me out of the door. The captain says, "God d-n you; I will show you about drilling, you d-d son of a bitch." Then they circled around, with me in the middle to look at, like I was a monkey, or a baboon, or some thing. Then he commenced down here [indicating the legs], and I was a jumping and prancing and begging. When I thought they was done with me, I says, please to let me go. The captain says, "Jerk down, God d-n the nigger; here, jump down, and I will fix the nigger; [here the witness lay down]; they jerked me on my face to the ground. [The audience laughed at the ludicrous gestures of the witness.] Keep still; I will get done telling it directly. They jerked me to the ground; one man jumped on top of my head and another across my shoulders, and just had me fastened to the ground. Says I, Oh, pray! Oh, master! do, if you please—"Oh, God damn you, I will fix you now." Then right across here [illustrating the whipping]—"God damn you! God damn you! God damn you! I will make you true to your party! Let him up! Let him up!" The captain stretches off then in front, and all the rest followed, [illustrating their gait] all making a noise like Oo-oo-oo-o. There was one go-dong nigger. I wish his head was cut off to-day.

Mr. Corbin. That is no testimony.

Witness, I hope it will be done! The nigger came back to me and caught me by the arm. "Now, my friend, you go to work and make your living honest, and the Ku Klux will never trouble you no more—Oo-oo-oo," [imitating the gait.]

Q. Well, they left you? A. They left me, now, in the yard. I wasn't able to move. I staid in the yard until they went to Uncle Isam Moss' house. It wasn't over a hundred and fifty yards; it was so we could stand in our doors and talk to one another. Directly I heard them at Isam's house like they had been to mine; the same knocking and hollering, and "Ho, man! you home to-night?" I heard when the door flew open, and they didn't make much noise after the door was open. Directly I heard shooting right in Isam's yard.

Q. What did you do finally, yourself? Did you get up? A. Yes, sir; I didn't get up; I couldn't get up.

Q. How did you get up? A. My wife came to me and caught me by my hand, and dragged me into the house.

Q. How far were you from the house when they pounded you? A. Right at the door.

Q. Your wife right there? A. She was standing in the door all the time begging and crying, and screaming the whole time.

Q. Did they do anything to her? A. No, sir; nothing.

Q. After they let you go, you went into the house? A. She helped me in the house, and went in.

Q. How long were you confined to your bed? A. Three weeks, and couldn't leave the house; but it looked like my back-bone here was unjointed, and my head was cut very deep, and Dr. Johnson came on Sunday morning and dressed my head.

Q. Was that on Saturday night? A. Yes, sir, on Saturday night.

Q. About what time last winter was this? A. It was the 25th of January.

Q. Were you a voter in York county? A. Yes, sir, I voted there often; voted every time there has been an election yet.

Q. What ticket did you vote? A. I voted the Republican ticket.

Q. At the last election? A. Yes, sir.

Q. Did you vote for Mr. Wallace? A. Yes, sir, and all the rest.

Q. What did the other side call your ticket? A. They called our tickets Republican tickets.

Q. Didn't they call it the Radical ticket too? A. Yes, sir, they called it first one way and then another.

Q. Did you know any of the party that night? A. No, sir, I didn't know any of them; they was too smart for me; they cut my head too quick.

The defense waived cross-examination.

#### TESTIMONY OF HARRIET SIMRIL.

Harriet Simril (colored) was called as a witness for the prosecution and being duly sworn testified as follows:

Q. Who is your husband? A. Sam Simmons.

Q. Where do you live? A. At Clay Hill in York county.

Q. How long have you lived there? A. A good many years.

Q. Has your husband lived there a good many years. A. Yes, sir.

Q. Did he vote at the last election? Yes, sir.

Q. Do you know what politics he is? A. He is a radical.

Q. Did the Ku Klux ever visit your house? A. Yes, sir; I think along in the spring.

Q. About what time in the spring? A. I cannot tell you exactly.

Q. Have they been there more than once? A. Yes, sir; they came on him three times.

Q. Now tell the jury what they did each time? A. The first time they came my old man was at home; they hollered out "open the door," and he got up and opened the door; they asked him what he had in his hand, he told them the door pin; they told him to come out and he came out; there two men that came in, they came in and wanted me to make up a light; the light wasn't made up very good and they struck matches to a pine stick, and looked about to see if they could see anything. They never said anything, and these young men walked up and they took my old man out after so long—and they wanted him to join this Democratic ticket; and after that they went a piece above the house and hit him about five cuts with the cowhide.

Q. Do you know whether he promised to be a Democrat or not? A. He told them he would rather quit all politics if that was the way they was going to do to him.

Q. What did they do to you? A. That is the second time they came. They came back after the first time on Sunday night after my old man again, and this second time the crowd was bigger.

Q. Did they call for your old man? A. Yes, sir; they called for him and I told them he wasn't here, then they argued me down, and told me he was here; I told them no, sir, he wasn't here. They asked me where was my old man? I told them I couldn't tell; when he went away he didn't tell me where he was going. They searched about in the house a long time, and staid with me an hour that time—searched about a long time and made me make up a light, and after I got the light made up then they began to search again, and question me again about the old man, and I told them I didn't know where my old man had gone.

Q. What did they do to you. A. Well, they were spitting in my face and throwing dirt in my eyes, and when they made me blind they bursted open my cupboard. I had five pies in my cupboard, and they eat all my pies up, and then took two pieces of meat; then they made me blow up

the light again, cursing me, and after awhile they took me out of doors and told me all they wanted was my old man to join the Democratic ticket; if he joined the Democratic ticket they would have no more to do with him, and after they had got me out of doors they dragged me into the Big road, and they ravished me out there.

Q. How many of them? A. There was three.

Q. One right after the other? A. Yes sir.

Q. Throw you down on the ground? A. Yes, sir, they throwed me down.

Q. Do you know who the men were who ravished you? A. Yes sir, can tell who the men were: there were Ches. McCollum, Tom McCollum, and this big Jim Harper.

Q. Who ravished you first? A. Tom McCollum grabbed me first by the arm.

Q. What next? A. All nasty talk they put out of their mouths. [Witness here detailed the conversation on the part of her tormentors, but it was of too obscene a nature to permit of publication.]

Q. What was your condition when they left you? How did you feel? A. After they got done with me I had no sense for a long time. I laid there, I don't know how long.

Q. Did you get up that night? A. Yes sir, and walked back to the house again.

Q. Have the Ku Klux ever come to you again? A. No, sir; they never came back no more after that; they came back too, but I was never inside the house.

Q. Did your husband lay out at night? A. Yes, sir; and I did too—took my children and when it rained thunder and lightning.

Q. When they came back what did they do? A. When they came I wasn't there; I went there the next morning and there was a burnt chunk down in the corner.

Q. Did it burn the house any? A. No, sir; it didn't burn it—they done that to scare my old man, and after that my old man and me drowaed our fire out every night, and went away.

Q. Did they come there any more? A. They didn't come any more, at all; the house was burned the next morning when I went to it.

Q. Did they burn your house down? A. Yes, sir; I don't know who burnt it down, but the next morning I went to my house and it was in ashes.

Q. Why did you lay out? A. We laid out in the woods.

The Court. Q. Why did you lay out? A. We went a way up towards the river.

Q. To get out of the way of the Ku Klux? A. Yes, sir; I got of the way of them.

Q. That is what you went for? A. Yes, sir.

Q. How long did you and your old man lay out? A. I think we laid out for four nights. Yes, we lay out four nights; I cannot exactly tell how many nights, but he lay out a long time before I lay out.

Q. Did those Ku Klux have on masks and gowns? A. Yes, sir, they had on gowns, and they had on false caps on their faces.

The defense waived cross-examination.

TESTIMONY OF SHAFFER BOWENS.

Q. Where do you live? A. I live in Cleveland N. C.

Q. Have you ever lived in York county? A. Yes, sir, two years ago I lived in York county, in the upper edge of the county.

Q. Did you ever join the Ku Klux Klan? A. Yes, sir.

Q. Where? A. In North Carolina.

Q. What time in 1867? A. I think it's about this time of the year—sometime in December.

Q. Who initiated you, and what was the mode of initiation? A. Frank Ellis initiated me; made me kneel down on my knees, blindfolded me, and repeated the oath to me, and I said it over after him.

Q. Can you tell us the substance of the oath? A. I cannot, sir.

Q. Was it at a meeting of the Klan? A. Yes, sir.

Q. How many were present? A. I cannot tell, sir; there was ten or fifteen.

Q. Now, can you tell us what the purposes of the Order were? A. My understanding was, to advance the Conservative party and put down the Radical party.

Q. How were they to do it? A. By killing, and whipping, and crowding out men from the ballot boxes.

Q. Have you been a member of the Klan ever since? A. Yes, sir.

Q. Have you operated with the Klan? A. I have been on raids with them.

Q. Tell us something about the raids you were on.

A. The first raid I was on, was on the 2nd of December.

Q. Tell us all about it. A. A year ago now, a week or ten days before the night was set for him to be killed, Ned Turner came over to the shop where I was at work, and told me that they was going to make a raid on Roundtree.

Q. He lived in York county? A. Yes, sir, he did; and it was then rumored through the country that they was to meet the next Friday night, or next Friday night week, at Moore's bridge, on Buffalo creek. Well, when the night came on I went down there, some four or five fellows there.

Q. Who were they? A. Robert Moore was one, Wallace Wiley, Reuben Goforth, Asbury Mullinax, and others that I don't recollect; we staid down there round a small fire awhile, and they kept coming in from different directions; at last they got sort of afraid for fear somebody would find them out there, and they moved further up the creek into a thicket and built up a large fire; then staid there, I suppose, till about 10 o'clock; I asked them what they was going to do with the nigger? they said they was going to kill him; I told them that I didn't think it would be well to kill him; I thought it would be best to go and talk to him or whip him, if they was determined to do something; they swore they was going to kill him; that was about 10 o'clock, I suppose; I asked them what they were staying there for? they said they were waiting for some people to come from the other side of the river, and about that time Bob Moore got on his mule and said he was going to meet those fellows; he went, and was gone, I suppose, two and a half or three hours and came back, and when he came back Gabriel Humphries and George Turner, and one or two others that I didn't know, came with him, and some of them told Moss to take charge of the crowd, and Moss said he didn't want to do it; he then told Turner for him to take charge of the crowd, and he then hollered for them all to form in a line in the road and start; Turner was in front; all them that was riding got on their horses and started in front, and those that was walking went behind them; then went to about a quarter of a mile of Roundtree's house and got down and hitched the horses, and detailed four or five men to stay with the horses. Turner then took the lead again and hollered to the men to follow him; went on till they came up to the fence, jumped over the fence, and then they commenced to jump over the fence, and threw three or four rails over to give the nigger a signal, but he didn't take it; he ran into the loft. They then went and surrounded the house, and somebody fired—a gun was discharged.—I don't know which

side fired the first gun. When the first gun was fired, about fifty or seventy-five guns were fired into the cracks and windows of the house. Turner ordered them to quit shooting. At last they got stopped. He then ordered somebody to burst the door down, and Jasper Spencer and some other men, I don't know who, gathered a large rock between them and rushed in and busted the door down. The house was a double house with an entry through the middle, and they busted the door down. I walked to the edge of the entry; they rushed into the house and couldn't find any one in there, and some one outside hollered. They all then rushed out of the house that was in there and run around the house and commenced firing in the loft. I then walked into the entry, and was standing in front of the house. Mat Humphries and Elijah Ross Sepaugh was standing beside me; they commenced shooting into the loft. Roundtree run to the edge of the loft and shot down at us in the entry. He hit Sepaugh, cut him across the breast a little and in the wrist; he then went back and jerked up a plank—it was a loose roof—and dropped down through on the floor and jumped out of the window, and then they commenced firing at that end of the house where he jumped out of the window. When they done that, I run out and run around, and just got around, when I saw him fall, I walked to him and helped him up. When I done that, some other one of the party—I don't recollect who he was—walked up and took hold of him and told him “now damn him to go back and show him where them guns was,” it was reported that he had several guns and pistols, and some other one walked up and kicked him behind and told him God damn him, go right on and show where the guns was. He said he would do it. When they kicked him I let him loose; when I let him loose the other let him loose also, and he dropped down on his face—I think we walked some ten or twelve steps, to where Elijah Ross Sepaugh was standing. I walked up to him and seen that he was hurt in the wrist; he said he was shot; I walked to him and picked out one or two of the shot. Just as I walked up to him, Henry Sepaugh, Elijah Ross, Sepaugh's brother came up, and seeing that he was shot, and drew a long bowie knife, and walked to where I left the nigger lying struggling. Some other of them had turned him over on his back, and in a few minutes after Sepaugh went back, some of them came up and said that Henry Sepaugh had cut his throat. I went back to him and seen that his throat was cut; some of the crowd then went into the house and hunted about for guns; they found a repeater outside, that I suppose he had in his hand when he jumped out of the window. They couldn't find any more guns and they started and was standing down in the lane and somebody down in the field began hollering to rally boys, for here was them damned Ku Klux. I suppose it was a nigger, they said so, I don't know. When he commenced doing that, George Turner hollered back, yes God damn you the Ku Klux was there; and about that time some one of the party from where the house was, hollered to leave there, it wouldn't do to stay a minute longer. I then started to run and the rest followed and run back to the houses, and we all went together about a mile into Mr. Duncan's lane, most of the crowd went there but me, and some of them went up the road as far as Moore's Mill on Buffalo; and there some of the rest turned off. I went on a piece further, and when they all left, I went on home.

Q. Was Roundtree a colored man? A. Yes sir.  
Q. Do you know what his politics were? A. It was reported that he was a Radical.

Q. Did you understand this raid made on him was in pursuance of the general purpose of the order? A. Yes sir.

Q. Was he dead when you left him? A. Yes sir, he was dead.

Q. What other raids have you been on. A. One sir; when John Wright was whipped.

Q. When was that? A. Sometime in January, I think, last.

Q. Describe it? A. I was then at Lewis McSwain's, in York county, S. C. I was at work there on a mill and it was reported to me that they was going to make a raid when night came on in the cooling grounds. McSwain's boys asked me if I would go. I told them I didn't care, I felt tired and didn't care much about going; they said they was all going to ride, and they would furnish me with a horse if I would go. I got on the horse and went about a mile from there into an old field and waited there until the rest of the crowd came; some ten or twelve men came, when they all got on their horses and went till we got within a half a mile of John Moss', and then we divided into three crowds; each crowd was to go through a cabin apiece; one was to go down to Moss' house, and the other to go to some other nigger houses; the two that was to go to the nigger houses, they went, and they couldn't find anybody; they all rushed in and met up with the crowd that was at Moss' house; they met and went to the houses together; just as we got in sight of the houses, we seen three persons running across the hill; some of them ordered them to shoot; nobody shot; went into the house, ordered the door to be opened, opened the door, went in, and searched the house; inquired for the Wright boys; some of the Wright boys wasn't there; then went back to where a woman by the name of Skates lived in a little cabin; they knocked the door of the cabin down.

The Court. Any one in? A. No, sir.

Q. Was it a white woman or a colored woman? A. A white woman.

Q. What did they break her door open for? A. I don't know, sir; they said they was going from there to Jane Boheliers', about two miles; they ran their horses from there to her house, or near her house, and hid the horses; they then went down to the house, surrounded it, and ordered the door to be opened; some of them got up and opened the door; they went in and searched about, and couldn't find anybody in the house; they then jerked up a plank of the floor and looked down, and there were two fellows; they took up a plank and gone under the floor, when they heard us; they were John Wright and Jake Wright; they took them out and Joe Harden came in, and he said there was another; jerked up another plank, and John Moss was in there, called Red John Moss.

Q. White or colored. A. He was colored. Took him out and took him up the road about two or three hundred yards from the house; made them pull their clothes off, their coats and shirts. Joe Harden then ordered some one of the crowd to cut twenty-five good hickories. Some of the party done it, and commenced whipping them. They struck Jake Wright and John Moss two or three licks, and they both broke and run, and they got away, and Harden ordered them to shoot. Somebody busted a cap, but his gun never went off. They then took John Wright and locked his arms around a sapling and tied his hands. Joe Harden then took a hickory and whipped him severely. We all tried to get him to quit whipping him, but couldn't do it. He then took the butt of his stick and knocked him down with it two or three times.

When he was satisfied he turned him loose, made him run, and shot at him as he ran.

Q Did he hit him? A No, sir, I don't think he did.

Q Were these grown men, all of them? A Yes, sir; I suppose they was all grown, sir. Never saw them before that night, but they looked to be grown then.

Q Where did you go next? A They then turned and went back to the houses. I asked them what for? They said they hadn't got through. They was going to take that woman out; and they had a pot of tar and lime, and was going to pour her full of it. I told them I didn't think they ought to do that. If they was going to do anything to go back and talk to her.

Q Was she white or colored? A She was white; Joe Harding said he was going to have it done; went back and ordered her out; made her lie down and held up her clothes.

Mr. Wilson. Has that anything to do with the indictment?

Mr. Corbin. It has directly.

The Court. They propose to connect it and we might as well let the people hear, and let the jury know what things exist about us. A Made her lie down and held up her clothes; then ordered Elijah Ro-s Sepaught to fetch the pot of tar and told him to pour it in.

Q Did he obey them? A He then poured it into her, as much as he could; and took a paddle and rubbed it on her.

Q Poured it in her where? A I don't like to tell.

The Court. In her privates?

The witness.—He poured it in her privates. They then told me to give her orders to leave there in three days; I told them that I hadn't anything to do with it, and didn't want to give any orders about it at all, but Mr. Harden, he was the one told me to order that—told me he was in charge of the crowd, and if he gave, he gave all the orders, he said, he was afraid to talk any more, they would recognise his voice. I then told her the orders were for her to leave in three days, and get out of the place. They then turned and left, and scattered and went home.

Q What were you after those negroes-for? A I don't know what they were after them for; I was about ten miles from home, at work on a mill.

Q Do you know that they had any other purpose than the general objects of the order? A No, sir.

Q That was the understanding? A I didn't ask them what they were going to do it for.

Q They hadn't any special reasons? A No, sir; just the general object, sir.

Q They were out as a Ku Klux Klan? A Yes, sir.

Q All disguised? A No, sir; part of them not disguised; several of them had disguises, but some pulled them off.

Q Did they have gowns on? A Some of them had. I didn't have any.

Q Had they arms? A Almost every one had a pistol or gun.

Q Some of them rode and some of them walked? A No, sir, they was all riding.

Q How many in the crowd? A I don't know, sir; there was fifteen or twenty.

Q Where next did you go? A Then went home from there.

By the Court. Where is this man Harden? A He was at home the last time I heard of him.

The Court. Has he been arrested.

Mr. Corbin. No, sir; he has not been caught yet. There is some difficulty in finding him.

The defense waived cross examination.

The Court adjourned at 4 o'clock till 11 Wednesday.

## EIGHTEENTH DAY'S PROCEEDINGS, DECEMBER 20.

The Court met pursuant to adjournment. Hon. H. L. Bond, presiding; Hon. G. S. Bryan, Associate Judge.

Mary Robertson, *alias* Thompson, a witness for the prosecution, being duly sworn, testified as follows:

### TESTIMONY OF MARY ROBERTSON.

*Direct Examination by Mr. Corbin.*—Q Where do you live? A Three miles below Chester.

Q Where did you live formerly? A At Bullock's creek, on Billy Wilson's plantation; he is sometimes called Billy Wilson, a big white man.

Q When did you leave that plantation? A On the 5th of March, I think.

Q What did you leave there for? A The Ku Klux ordered me away.

Q Did the Ku Klux visit you there? A Yes, sir.

Q Now, tell us all about it. A The first night they came there, it was on Sunday night, I heard them come up to the house. I went out and stood a little piece on the road, and then one of my little boys came along. They had asked him to show them where John Robertson's house was, and my little boy showed them the house, and they came up and bursted in the door; then they asked if my husband was in; then they gave my little baby boy two cuts and told me to get a light; then they searched about the house; they asked if we had a gun. They then took the gun out of my house—who took the gun, I don't know; then they went to Jim Crosby's and got his gun and broke that; I saw them break it, myself.

Q Do you know who went to Jim Crosby's? A I was standing out in the lot.

Q How far is Jim Crosby's house from your's? A About the length of this house.

Q Did they find your husband that night? A No, sir; they never found him: they didn't see him that night. That was the first night they came.

Q Did you know any of the party? A I knew one Captain John Mitchell.

Q Is that the man here? Yes, sir; that is the man, [pointing to defendant.]

Q Did they visit you again? A Yes, sir.

Q How long was it after the first visit? A It was about two weeks after the first visit.

Q Tell us all about that? A They did not find me in the house that night; I was in the back house that night; they came round to the door and hollowed open the door; I was in the house when they came again; they hollowed open the door and I opened it; when they saw me they said stand back, and the man held a pistol at my breast. Said he, damn you, make up a light; where is your husband? Said I he is away; stand back said he until I search the house. Come away said he to the back of the house; I put on my shoes and was going to put on my clothes; No damn you said he come out here; I started to go over to the back of the house; no said he come this way; I followed him about one hundred yards, maybe two hundred

yards from the house, and then said he where is your husband; I said I did not know, then he said I will make you tell a better tale than that.

Q Did you know him? A No, sir; but he snapped a pistol in my face three times; said he you had better not know me, lie down; no said I, I cannot do that; there is no help for you said he, damn you lie down; I said I don't like, he said if I didn't he would shoot my damned brains out; he stood there talking to me and said are you going to lie down he said if you don't I will hook you with this knife; then he left me, and said damn you stay here till I come back; when he left me, I went to Jim Crosby's house, and they all went to Wilson's big house; when he came back he said damn you I told you to stay here and he cut me with a switch, and I thought I was cut in two; then said he, "walk out," and I walked out to the door, and when I was just out side the door they made me pull of my sack; then they whipped me with hickory switches; there were four of them, and they gave me five cuts apiece.

Q Did you know any of the parties? A I knew the four that whipped me, John Mitchell, and his son Joseph; one was little Joe, and little Ed. Leach. It is he that murdered Joe Leach's daughter.

Q You say you made up a light? A I did.

Q Did you see Capt. Mitchell's face there? B. I saw all their faces.

Q Did they have any disguises on? A. Tom Whitesides and Watson had white dresses and long horns, but they had nothing over their faces.

Q Do you know Dr. Whitesides well? A. I do, very well; I know he married Joe Leach's daughter and my mother lived on the same plantation—and I went there occasionally to see her and I have been up at the house many times.

Q How many years have you known him? A. I have known him ever since he married Joe Leach's daughter.

Q Was that before or since the war. A. Since the war.

Q Do you know John Mitchell well? A. Yes, sir; I have known him five years before I was free.

Q Is this the man, J. W. Mitchell? A. Yes sir, that is the man there—[pointing to the defendant] and his son Joseph Mitchell,

Q Do you know the man that took you into the field? A. Yes sir, it was Joe Leach.

Q Did you know any others of the party. A. Yes sir; Dr. Tom Whitesides; and Mr. Watson, was another.

Q Is this the person you see? A. Yes, that's the one, [pointing to the defendant.]

Q Where did you see Mr. Whitesides? A. He and Mr. Watson was in the house together.

Q Do you think you can be mistaken about him? A. No sir, I cannot be mistaken, for I know him.

*Cross Examination.*—Q Do you state two of them had disguises, masks and gowns? A Yes, sir.

Q What house do you say this was, you were in? A They came into Jim Crosby's house while I was there, and they asked if Jim was there, and his wife said he was not; then they looked up at the loft and said he was not there.

Q Where were you sitting? A I was sitting just in the fire-place

Q What time was this? A It was in March.

Q About what time in March? A I don't know the day.

Q Do you say none of the rest had disguises on? A No, sir; they had every day's dress on; and they had pistols buckled around them—Dr. Whitesides and Mr. Wilson had a white gown and a red cap, and they had horns on their head.

Q How far did their head-dress come over their faces? A I don't know, exactly; a little longer than my finger.

Q Do you mean over the face? A Yes, it came over the forehead; it looked like that, but I do not know exactly how long.

Q What hour of the night was this? A. I reckon it was between ten and eleven o'clock.

Q And you say it was about the first of March? A. It was on Thursday night, and I think it was about the first of March.

Q Was this the night they whipped you? A. That was the night I am talking about.

Q Was Dr. Whitesides' chin covered? A. His face was not covered a bit.

Q What sort of a light was there in the house? A. It was a good shining light, from a pine fire.

Q Had you any candle light? A. Nothing but a big red light from the fire.

Q by Mr. Melton. The first night, you say, was the night on which you recognized Captain Mitchell? A. Yes, sir.

Q What hour of the night was it? A I reckon about ten or eleven o'clock. I always went to bed before that, but we heard a noise at the house above, and we all ran out and listened, and we heard the Ku Klux.

Q Had Dr. Whitesides any whiskers on then? A I never saw him with whiskers at all.

Question by Mr. Corbin. Q Have you had any conversation with Dr. Whitesides since that night? A No, sir; I did not speak to him since that night.

#### TESTIMONY OF JAMES CROSBY.

*Examination in chief by Mr. Corbin.* Q Where do you live? A In York county, on Bullock's creek, on Dennis Crosby's plantation.

Q How long have you lived there? A All my life. I belonged to him all my life.

Q Where did you live last winter during January, February and March? A With Mr. William Wilson, he is sometimes called Big Billy Wilson.

Q Did the Ku Klux Klan visit you last winter? A Yes, sir.

Q Tell the jury all about it? A Well, they came to me first on Sunday night—I had a long talk about them before they came—I had been in John Thompson's house, between ten and eleven o'clock that night; I broke round and came out and heard the dogs barking mightily towards squire Hood's, and I went down into my house, and pulled off my Sunday clothes and put on my every day clothes. About this time I heard a voice shouting up in the old field, and saying Jim! Jim! and I came to the door and said what do you want? It was my mother-in-law—she said "they are killing my poor children up here." I didn't want to be scrimmaged, because I thought women were very talkers, anyhow, and I was not going to be frustrated by any bother of her's, and she staid there, but I heard the Ku Klux when they were up at her house, and after a while I seen them coming down, and they came right by my door and right up to John Thompson's house, and they came against the door and broke it open, and the sound of that door was not over till the other crowd came up to the other door and burst it open; I staid sat there, and I heard some of them say, God damn him, shoot him; and I then heard the lash of a whip—whipping a little boy, and I still sat there, for I was not going to leave my house that night, because I had done nothing, and I still staid there. After a while the others came along and said, hell, here is another house; and they came to the door and burst it open. By this time there was a crowd at the front door, and they steps up to the door and hollers out, God dam you; and then he cocked his gun and then I walked out. Said he, who are you? And I said my name is Jim Cros-



by. Oh yes, said he, you are that God damn preacher. Says I, yes I am. Then he said, what in the hell are you doing here? Said I, I came here to work. And what do you come on this God damned plantation for? Said I, I didn't think there was any difference in working for any one. God damn you, said he, light a candle. Then, they began talking as fast as they could, and asking me about Mr. Wilson, and what he came here for; and said he, God damn you, get some pine and make a light. Then they swore at me, and asked me for my gun. I told them it was in the house. God damn you, said he, go and get it. I went into the house and got the gun, and then he swore at me again. They then made me come out of the house, and six of them fell on me there and whipped me at once.

Q. What did they whip you with? A. Cowhides and hickory, the reason I know that they were hickory was that I saw they brought them with them and I know perfectly that the others had cowhides; then one of them told me to take hold of my gun and he said God damn you knock it against that wood stump; then they swore at me dreadfully again; and made me knock the gun against the stump again; it was broken into four or five pieces; then they swore at me again and said we will come back and see you again; after the gun was broke, one of them says to me what are you going to tell the negroes to-morrow; what the Klu Klux have done to you to-night; said I "I am not going to tell nothing at all;" see here, said he, you tell these negroes that they must not let us catch any God damned nigger in this plantation, by this time, Saturday; if they did they would kill every God damn one of them, says he. are you going away from here to-morrow says, I "I will try," said he, "God damn you, you had better go;" are you going to do this said they, I said yes; now God damn you dance round for us; I said I could not dance, then they swore dreadfully at me, and I jumped up and done what I could, but still I did not dance any. [Here followed an obscene expression, which we omit.] Then they told me to go to bed. That was the first raid they made on us.

Q. Now, go on with your story. A. The next time they came to me I was lying up in the gin house, and what awaked me that night was the sound of the guns round big Billy Wilson's house. They had shot a dog. I went to the door, and I heard them say, "God Almighty d—n me, he is in there, and he has got to come out." They said if he didn't come out, they would shoot the d—d house all to pieces. That was Billy Wilson's house; I saw him there, with a light in the house, and I saw him when he came out; and I heard them say, "God d—n me if he isn't fat." I came from the platform, and went out into the thick-  
et, and I didn't know any more that night; and as they went on, I heard about twenty pistols fired. There were two crowds of them, and that was the end of that raid.

Q. When did they next come back? A. It was about two weeks between the times. The next time they came back, I was sitting in my house. I have been lying out from the time they first came—from the first or second week in January, till it was nigh March.

Q. Had you been lying out all that time? A. Yes, sir, for fear of being caught in the house.

Q. Tell us about the next raid. A. The next time I was sitting in my house, and what wakened me was my wife, who had just left me, and had gone to bed; she had been sick. She heard something, and she said, "What is that?" I made no answer, but slipped out the back door, and stepped round the way that I heard them coming up, and I kept the house between me and them. They went on to John Thompson's house, and they went in there. I heard them up at John Thompson's cursing; for Mary Thompson, she talked mighty loud, and I heard them cursing her. I slipped on my pants, and was about fifty yards from the house, for I got away as fast as I could, and crouched down in the corner of the fence; and when I was there, and as I looked towards John Thompson's house, I heard a woman and a man coming, and they came within ten

steps of where I was, and I heard the words, "God d—n you, lay down," and she said, "I won't lay down." "God d—n you," said he, "do it at once," and I could hear the pistol crack, but she never lay down.

Q. Who was that? A. That was Mary Thompson.

Q. Who was the white man with her? A. I do not know.

Q. What else happened? A. That was the last raid. On the first raid, the men that whipped me was, "Joe Leach," Dr. Tom Whitesides and John Mitchell.

Q. Those two men here? (pointing to the defendants.) A. Those two men sitting there, (pointing to the defendants.)

Q. How long have you known John Mitchell? A. Ever since I was a boy.

Q. Have you lived near him? A. He lives on Broad River, and I live on Bullock's Creek. I have been seeing him occasionally all my life. I cannot be mistaken about him.

Q. How long a time have you known Dr. Whitesides? A. About four or five years.

Q. Do you see him often? A. Yes sir.

Q. How did you recognize him that night? A. I recognized Joe Leach and George Leach by their size. One of them is a mighty big, thick, stout man. I heard George Leach talking to my wife. I knew by the sound of the voice.

Q. How did you know Dr. Whitesides? A. By his size.

Q. Nothing else? A. No, sir. This was on the second raid. And I knew his track when he went to the gin house for me. They said when they came there, they understood that Jim Crosby slept in the gin house.

Q. Who said so? A. The Ku Klux said so themselves. They said to my wife, that they understood that Jim Crosby slept in the gin house, and that John Thompson slept in the kitchen, and the next morning I saw the tracks come down from the gin house, and they were all large but one, and one was a small, neat track, and everybody that saw that track, said it was Dr. Whitesides.

Q. What kind of a foot has he? A. It was a small neat track, about as small a track as in that section.

Q. Have you seen him often during the last four years? A. Yes, sir, occasionally.

Q. How do you know Captain Mitchell? A. By his size.

Q. Nothing else? A. Yes sir, he had a red scarf over his face.

Q. And he had red horns on? A. Yes, sir, but I could not swear pointblank about his voice; all the proof I had was his size.

*Cross Examination.*—Q. by Mr. Wilson. You say you knew Dr. Whitesides by his size and by his tracks? A. Yes, sir.

Q. When was the track examined by you? A. I examined it next morning.

Q. Were there any other tracks about there? A. Yes, sir, then three that went up to the gin house after me.

Q. And you say you knew the track to be Dr. Whitesides'? A. Yes, sir; on account of the size.

Q. by Mr. Corbin. How many times did Dr. Whitesides come there? A. He was there the first raid that was done. I have no proof that Sam Moss was there.

Q. by Mr. Melton. On what raid did you say you saw Captain Mitchell? A. On the first raid.

Q. First raid? A. Yes, sir.

Q. Were you on the place the time the other raids were made? A. Yes, sir.

Q. Did you recognize any other person on the raid except Dr. Whitesides? A. After the first night that they came there, they were not all the same crowd; there was always one or two that was in the first crowd in every raid that was made after.

Q. You say it was the first night that you thought you recognized Captain Mitchell? A. Yes, sir.

Q. What night was it you heard this conversation between this man and same woman. A. That was on the third raid.

Q. by Mr. Corbin. Have you voted in York county? A. Yes, sir.

Q. Are you a Radical or Democrat? A. I am a Radical.

Q. Did Billy Wilson vote at the last election? A. Yes, sir, he voted the Radical ticket.

Q. Was Wallace on that ticket for member of Congress? A. Yes, sir.

Q. Is "Wilson" well known to be a Radical? A. Yes, sir.

TESTIMONY OF CHARLES LEACH.

Charles Leach, a witness for the prosecution, being duly sworn, testified as follows:

*Examination in Chief by Mr. Corbin.*—Q. Where do you live? A. On Bullock's creek, on Madison Smart's plantation.

Q. How long have you lived there? A. About five years.

Q. Have you voted in York county? A. Yes, sir.

Q. What ticket did you vote? A. The Republican ticket.

Q. Did you vote there last fall a year ago? Did you vote for Wallace for member of Congress? A. Yes, sir.

Q. Tell us if the Ku Klux visited you last winter? A. They did.

Q. When? A. A short while after Christmas, on Monday night.

Q. Tell us all about it? A. I remember being out, and I heard a gun fire a little after bed time, towards Mr. Berry's; I came out then, and I heard a terrible shooting; said I, the Ku Klux are out to-night, and I watched and lay about for about half an hour, and gave up that they would not come, and then I went in and shut the door, and laid down and dropped off to sleep, when a crowd came down on me, and I had no chance of getting away; they surrounded my house and burst the door open, and three of the men came in; "God damn you," said they, "make up a light;" they were in the middle of the floor; they asked me for my gun, and said they, "If we find any I will kill you;" said they, "You are a God damned Radical;" yes, said I, I voted the Radical ticket; said they, "You belong to that God damned League;" yes, said I, I went to the League meeting twice, and said I, I didn't see much sense in it; I didn't go back any more; gentlemen, said I, I can show you what kind of a man I am: on that I gave him a paper. Did Scott write that, said they, let us see the God damn paper, said he, and with that, they squatted down, and said, "it looks like all right;" this man who read the paper had a pistol in his hand, and the man on the right side had a pistol, and the one behind me had a double-barrell shot gun; then they dropped the paper and went to the door, and I thought that I was all safe; just as they got to the door, they gave me sixty or seventy lashes, and then they told me to go back to bed, and if we hear any more of you, I will come back again.

Q. Did you know any of the party? A. I didn't know nary a man.

Q. Why didn't you know them? A. Because they were so disguised, all of them had their faces covered up, and only little holes for their eyes and mouths.

Q. How many were there in the party? A. I know there was not less than thirty or forty.

Q. When they whipped you, how did they stand? A. One of them stood on the right, and another on the other side and all around me, and they loked about me, right and left.

Q. What clothing had you on? A. Shirt and draws.

Q. Where did they whip you? A. They whaled me right up from here, [putting his hand on his hips] to my neck; they cut me all to pieces, from here up to my neck.

Q. How much did they injure you; were you able to work? A. No, sir; I could not work, at all that day. I walked down to Mr. Smalls and staid there a week.

*Cross Examination by Mr. Wilson.*—Q. Do you know Dr. Whitehead? A. Yes, sir.

Q. Has he not ever since the war been very kind to the colored people? A. I never heard anything against him.

Q. Do you not know of his kindness; do you not know of his attending colored people free of charge, and adding them out of his private means? A. I know he has been practicing there.

Q. Don't you know of his attending them without charge? A. I don't know.

Q. Do you not know of his giving them corn? A. I know he gave some corn, and I got a bushel.

Q. Was he not regarded as a friend to the colored people? A. I never heard anything against Dr. Whitehead no way.

*Question by Mr. Melton.*—Q. You say this was on Monday night? A. Yes, sir, it was after Christmas.

Q. You say it was the first Monday night after Christmas? A. I couldn't say.

Q. Are you satisfied it was after Christmas? A. Yes, sir, and I think it was after New Year.

Q. Was it the same night there was some whipping in the neighborhood? A. I heard about some whipping.

Q. Who did you hear was whipped that night? A. Charlie Good, Amos Howell, Jeany Thompson and Press Holmes, I was told.

Q. You understood they were injured the same night that you were? A. Yes, sir.

Q. Did the others live in your neighborhood? A. One was about four miles off, and one was about one mile, and the other was about three or four hundred yards.

Q. Was there any one else whipped on your plantation that night? A. No one but me, sir.

Q. Where was Press Holmes? A. He was on Howell's plantation.

Q. Where was Howell whipped? A. In the sun house.

Q. Where was Jerry Thompson whipped? A. I don't know.

Q. Was Jerry Thompson at Henry Thompson's place? A. Yes, sir.

Q. Is his place called the "Beauty Spot"? A. Yes, sir.

Q. You say you did not recognize any of the parties? A. No, sir.

Q. How long have you known Captain Mitchell? A. I reckon 21 years.

Q. What is his temper about the colored people? A. He always treated me very well; I knew nothing wrong about him.

Q. What was his character among the colored people? A. He was thought very well off, as far as I know.

Q. By Mr. Corbin, Is Jerry Thompson a voter? A. Yes, sir.

Q. Did you vote at the last election? A. Yes, sir.

Q. Did he vote Republican or Democrat? A. Republican.

Q. How did Amos Howell vote? A. He never voted, he is not old enough to vote.

Q. How did Charley Good vote? A. I did not see him vote.

Q. Was he a Republican or Democrat? A. He was a Republican.

Q. Has he since been killed? A. He was missed that night. He left that night; I saw him that day, but he has not been seen since.

Q. Was he whipped the same night as you were? A. Yes, sir.

TESTIMONY OF ELIZA LEACH.

Eliza Leach being duly sworn, testified as follows:

*Direct Examination by Mr. Corbin.*—Q. Are you the wife of Charles Leach? A. Yes, sir.

Q. Where do you live? A. On Samuels' plantation, in York county.

Q. Do you remember any Ku Klux coming to your husband last winter? A. Yes, sir; I don't know what night it was, but it was Monday night after Christmas.

Q. How long after Christmas? A. A few weeks, I think.

Q. Tell the jury what happened? A. They rode up, and they broke down our door and ran in. "Oh, hell, make a light." One of them, then went down on his knees and blew the light; one of them ran up and fired in my husband's ear; they asked him what sort of a man he was, and he showed them his paper, and they read it, and they asked if Governor Scott wrote it, and he said no—he said, "I never saw the man in this life." Then they said, "have you got a gun and ammunition." He said he hadn't got none; they said "go and search," and said that, "if we find any we will kill you." Said he, "if you can find any by searching, I am willing to die." Said they, "come, out and fetch a light," when he got out on the lot, they said "God damn you, throw that light down." Then they went and whipped him; when they had done whipping him, they stopped and talked to him, and they said "if we hear any more from you, we will come back for you."

Q. Did you hear them ask anything about his politics? A. They asked him if he was a Radical—if he had joined the League—he said he went there two or three times, but he didn't see any sense in it, and he didn't go back any more.

Q. How many men did you see there? A. The lane was full of them. I saw two at the fire. I had been

two weeks sick, and I lay in my bed just peeping out, and the rest were all in the dark.

Q. Did you know any of them? A. No, sir.

No cross-examination. The prosecution here rested their case.

Mr. Melton desired the Court to permit John W. Mitchell to be called to the stand as a witness for the defence.

The application was overruled.

#### TESTIMONY OF W. C. WHITESIDES.

W. C. Whitesides, a witness for the defence, being duly sworn, testified as follows:

Question by Mr. Wilson.—Q. Do you know Charles W. Foster? A. I do.

Q. Did you see him while he was in jail at Yorkville? A. I did.

Q. Did you hear him speak on any occasion, and if so, when, in reference to Dr. Whiteside? A. Yes, sir, I did.

Q. What did he say? A. He said he had thought he was the man on the raid, but he was mistaken; that he got on the raid at all.

Q. What raid? A. On the raid that whipped Charley Leach and Charley Good. He said he was not the man that was on the raid, and that he would see Maj. Merrill and rectify it.

Q. Was any other person present when he said that? A. Yes, sir; Mr. Archey, John Miller and Robert Riggs were there.

Q. Who was with you when you heard that? A. I think Mr. John Miller and Robert Reagan were in the same room.

Q. Repeat what was said? A. Dr. Whiteside asked Charley if he was going to rectify that mistake, and Foster said he was going up to Colonel Merrill's office to rectify it.

Q. How long was Foster in jail? A. I don't remember; about a week, or probably more.

Q. When Foster said he was going up to Major Merrill's to rectify the mistake was he not in jail? A. He was outside, and then he started off; I think he was on his bond.

Question by Mr. Melton. Q. Do you remember the night Charles Lynch was whipped? A. I remember hearing of it next day.

Q. Did you hear of any other persons being whipped at the same time? A. Yes, sir; Charles Goode I heard was whipped the same night.

Q. Where were you living at the time? A. At my father's.

Q. Whereabouts is that? A. About twelve miles from Yorkville, about three miles above Wiley's store.

Q. How far above Wiley's store was it to the place where Leach was whipped? A. I don't know exactly; probably four miles.

Q. From where you were living then to where you understood Leach was whipped was about seven miles? A. Yes, sir.

Q. Did you see Captain Mitchell that night? A. Yes, sir.

Q. What night do you mean? A. The night it was reported these men were whipped.

Q. Where did you see Capt. Mitchell? A. At my father's.

Q. You say you saw Capt. Mitchell on the night when Charles Lynch was said to have been whipped? Yes, sir.

Q. Where did you see him? A. At my father's house.

Q. What hour of the night did you see him. A. It was about dark; it was between dark and bed time.

Q. What was his mission there? He came to see my brother, D. Whiteside.

Q. Was the doctor out? A. He was at Dr. Darwin's.

Q. In which direction did Captain Mitchell go from your house? A. He went direct from our house, up a mile further, to Dr. Darwin's.

Q. How far above your house does Dr. Darwin live? A. About a mile.

Q. Do you know if he got him? A. Yes, sir; they came back by our house, Dr. Darwin, Dr. Whiteside, and Captain Mitchell.

Q. How far would they need to travel from the house where you were to Dr. Mitchell's house. A. About 9 miles.

Q. I understood you to say it was the next day you heard of the raid on Charles Leach. A. Yes, sir, it was.

Q. By Mr. Corbin. Are you a brother of Dr. Whitesides, the defendant? A. Yes, sir.

Q. Are you a member of the Ku Klux Klan? A. No, sir.

Q. Have you ever been? A. No, sir, I never was.

Q. You say you heard that Charles Leach had been whipped the night before? A. Yes, sir.

Q. Do you know anything about it? A. No, sir.

Q. You say that you heard Charley Good was whipped? A. Yes, sir; the same night.

Q. Do you know anything about it. A. I don't.

Q. I understand you to say that John Mitchell, the defendant, was in search of Dr. Whiteside that night? A. Yes, sir.

Q. What for? A. His mother was sick.

Q. Is Dr. Whiteside his family physician? A. No, sir; not all the time.

Q. Is he the regular family physician? A. I don't know whether he is or not.

Q. Do you know whether his mother was sick or not? A. Yes, sir.

Q. How do you know? A. Only from what he said.

Q. What time in the night was it that Mr. Mitchell and Dr. Whiteside came back to your house? A. It was about eight or nine o'clock.

Q. Were they riding on horses? A. Yes, sir.

Q. In what direction were they going? A. South.

Q. In what direction did Leach, Bresley Thompson, and Charley Good live? A. They lived south, in the same direction.

Q. What direction is Howell's Ferry from your house? A. It is southwest.

Q. In the same direction they were going? A. Yes, sir.

Q. Did the road they went go to Howell's Ferry? A. Yes, sir.

Q. Did you see Mitchell, or Whiteside, or Darwin again that night? A. No, sir.

Q. You were arrested, and were a prisoner at Yorkville, were you not? A. Yes, sir.

Q. How did the conversation commence, of which you have spoken? A. I was talking to Mr. McArchy. It was on the second floor of the jail at Yorkville.

Q. When was it? A. It was a considerable time after I was arrested, and a short time after Foster came into the jail. I don't know how long; I don't think it was more than a week or two after I had been in jail. I do not know whether it was more than a week or two, or less than three.

Q. Do you know when Foster was put in there? A. He was put in there with me; I remember the day he came in. The conversation occurred about four or five days after he came in there.

Q. Do you know if he had made a confession to Colonel Merrill? A. Yes, sir, he said so.

Q. Did he say what he had said to Colonel Merrill? A. He told me he had made a confession, but he never told me what it was.

Q. But you believe he told you that he made a mistake in saying that Dr. Whiteside was the person? A. I had heard that he had implicated Dr. Whiteside, and he said he was mistaken in the man.

Q. And yet you don't know whether he had made a confession or not? A. He told me he had made it, and he told me he was mistaken in the man.

Q. Did he tell you that he told Col. Merrill that he implicated Dr. Whiteside as the man and that he was mistaken? A. He did not say that he had told Major Merrill, but that he was mistaken in the man, he said that Dr. Whiteside was not on the raid to whip Leach and Good and others.

Q. Did he name those persons? A. No, not those particular negro.

Q. Now are you enable to swear that he had said that he had made a mistake about implicating Dr. Whiteside as the person who was present at the whipping of Leach and Good, when he did not say anything about what raid it was? A. He didn't tell me anything about that, but it was the raid he was reported to have been on, and he told me that he was mistaken in the man, and that he intended to rectify it.

Q. To whom? A. To Major Merrill.

Q. Did he mention Major Merrill? A. No, sir

but he said he would rectify it, he didn't mention Major Merrill's name that I remember.

Q. Did he mention where the raid occurred, in which he had implicated Dr. Whiteside? A. No, sir.

#### TESTIMONY OF JOHN MILLAR,

A witness for the defence being duly sworn, testified as follows:

*Direct Examination by Mr. Wilson.*—Q. Do you know Chas. W. Foster; did you see him in the jail at Yorkville? A. Yes, sir.

Q. Did you here any conversation in reference to Dr. Whiteside? A. I heard him say that Dr. Whiteside was the man he reported, that is all that I heard him say, after he got out, I heard him hollow back, and say that he was going to Major Merrill, and say that he would correct that mistake about Dr. Whiteside, and Dr. Whiteside replied, we will go home then in the morning.

Q. Who heard this conversation besides yourself? A. I don't know who heard it, I was not paying any particular attention to it.

Q. What raid was this man Foster speaking of? A. I don't know what raid, or anything about that.

Q. But you heard him say he was mistaken in the man, in reporting Dr. Whitesides, and he was going to correct it? A. Yes sir.

Q. Did he say he reported him? A. No sir, I don't know that he did, but I so understood from what he said, and he said he was going to Major Merrill's that evening to correct it.

Q. By Mr. Corbin. Are you a member of the Ku Klux Klan? A. No sir.

Q. Have you ever been? A. No sir.

Q. Did you ever make a confession to me and Major Merrill, in Yorkville? A. No sir.

Q. Did you not tell me that you were present at a meeting of the Klan? A. I attended a meeting.

Q. How did you happen to be there? A. They were reporting round the country about the Ku Klux, and they said they might come to my house.

Q. Tell us how you happened to be present at that meeting of the Ku Klux? A. My cousin told me he thought it would be best, and asked me if I didn't want to go into something of that sort. He asked me if I would not go along with him, and I said I would, and I told him I would. He said, if I didn't like I needn't join; and I told him if I liked I might; so I went there, but I did not join, and never have.

Q. How many persons were present at that meeting? A. 15 or 16 I guess.

Q. Where was it and when was it? A. At Sharon Church.

Q. What time was it? A. I don't know, but think it was sometime in the spring. It may have been along in May, I think.

Q. Was that the only meeting you ever attended? A. I was present at one more.

Q. How long after that? A. I don't know.

Q. Were you ever on a raid? A. I never was.

Q. Did you not go with the crowd that made Charles Russel dance? A. No, sir.

Q. Did you go and ride with a party that left Sharon Church, after the meeting, and go down and visit squire Sam Brown? A. No, sir; Coleman and Dan Carrol was with me at the meeting, and we went on to Carrol's and staid there all night; they told me if I didn't mind, that the Ku Klux would be after me; and do something with me. I thought I would like to know when they would be riding around, so I might watch for them. They told me if I would go with them, I might see.

Q. So you went to the meeting? A. Yes sir.

Q. How did you know when the meeting was to take place? A. A cousin of mine told me.

Q. What was his name? A. Napoleon Miller

Q. Did you think it was very surprising that your cousin, who was a member of the Ku Klux, should invite you to be present, when you were not a member of the Klan? A. He knew I would just keep it safe.

Q. Just as well as if you were a member of the Ku Klux Klan? A. Yes, sir; I reckon so.

Q. Did you take the oath? A. No sir; I never did.

Q. Do you remember making a confession to Maj. Merrill? A. Yes, sir; I do, but did not make a confession—I just told him what I knew about it.

Q. When did this conversation in Yorkville jail occur? A. I do not know the day.

Q. How near were you to Foster? A. They were

all standing around talking, and I was near enough to hear all they said.

Q. Did you hear him say he had made a confession. A. No, sir; I just thought he had, and I heard he had.

Q. He didn't tell you what raid he had reference to? A. No, sir.

Q. Or what colored persons he whipped? A. No, sir.

Q. What did he say he said? A. He said he was mistaken in Dr. Tom Whiteside being the man that he had reported, and when he went out he hollowed back, that he was going up and would correct that thing this evening.

Q. How long a time was it between the first and second conversation? A. Only a day or two, perhaps three or four days; it was Dr. Whiteside that ballooned him as Foster was leaving the yard; I think he asked him if he was going to correct that; he said, "Yes, I am going up there right now."

Q. Did he say what mistake he meant? A. No, sir, but I just thought—

Q. Was that all he said? A. Yes, sir, but I knew in my own mind what it was; I knew from what he said to me on the lower floor that he meant Dr. Whiteside.

Q. Were you and Dr. Whiteside confined together? A. Yes, sir, in the same room.

Q. Were you near him when he hollowed out to Foster? A. Right in the window, and looking out; neither of them said what they referred to; if they did I don't mind, but he said he would correct the mistake.

Q. Do you know anything of Dr. Whiteside saying that he would give Foster \$25 if he would go to Major Merrill and say that? A. I never heard it till yesterday; I heard him say that he would be willing to give \$25 if Dr. Whiteside was at home, attending McArch's family.

#### TESTIMONY OF ROBERT RIGGINS.

Robert Riggins, a witness for the defence, being duly sworn, testified as follows:

*Examination in Chief by Mr. Wilson.*—Q. Do you know Charles Foster? A. Yes, sir.

Q. Did you see him in jail at Yorkville? A. Yes.

Q. When was that? A. I could not say the date; it was when I was confined a few weeks ago.

Q. Did you hear any conversation in reference to Dr. Tom Whiteside: if so what was it? A. I heard him talking about Dr. Thomas Whiteside, my brother.

Q. Who was present? A. Several other persons.

Q. What did he say? A. He said he was mistaken in the man—that was on the Charles Good raid. He was mistaken about his being on the raid. He had told Major Merrill that he was on the raid, but he was mistaken in the man.

Q. Did you hear Dr. Whiteside call out to Charles Foster when he was outside the jail? A. Yes, sir, I did. That was after the conversation down stairs.

Q. What reply did Charles Foster make? A. He said he would fix it with Major Merrill. He was going right then and he would tell the Major he was not the man.

Q. By Mr. Corbin. Have you lived at Yorkville all your life? Were you a soldier in the Confederate army? A. I was in the reserve; not in the regular service.

Q. Are you a member of the Ku Klux Klan?

Question objected to.

(Mr. Wilson informed the witness that he was at liberty to decline to answer.)

Q. By Mr. Corbin. Do you decline to answer? A. I do.

Q. Were you chief of a Klan? Do you decline to answer? A. I do.

Q. Were you present on the Jim Williams raid when Jim Williams was killed. A. I decline to answer.

Q. Did you ever admit to me and Major Merrill that you were a member of the Klan. A. I decline to answer that also.

#### TESTIMONY OF ROBERT B. DARWIN.

Robert B. Darwin, being duly sworn, testified as follows:

*Examination in Chief by Mr. Wilson.*—Q. Where do you live? A. In York County.

Q. What is your profession? A. I am a practicing physician.

Q. Do you know Dr. Thomas Whiteside? A. Yes, sir, very well.

Q Is he a practicing physician in your county?  
A Yes, sir.

Q Do you remember the night when Chas. Goode and C. Leach were said to be whipped? A I do.

Q Did you see Dr. Thomas Whiteside that night?  
A I did.

Q What time of the night did you see him? A He was at my house that evening. I was not at the house when he came. It was just after dark that I came in, and he was there.

Q How long did he remain there? A I suppose it was about eight o'clock when we left there.

Q Where did you go to when you left? A To Capt. John Mitchell's.

Q What did you go there for? A To see Capt. Mitchell's mother.

Q What time did you arrive there? A I suppose it was about ten o'clock at night.

Q What was the matter with Mrs. Mitchell? A She had epilepsy and a fit.

Q Who was the family physician of Mrs. Mitchell? A Dr. Small was, and so was Dr. Whiteside, when Dr. Small could not attend. Dr. Whiteside was nearest, and I was next.

Q How long did Dr. Whiteside remain at Mr. Mitchell's? A He remained there till next morning after breakfast.

Q Did you remain there also? A Yes, sir; we both remained there.

Q Describe the room in which Mrs. Mitchell was lying. A It was a large room.

Q Were there many persons present? A I don't recollect who was there; Mrs. Howe was there and her daughter Sal, and Mrs. Whisnont—there were others, but I don't recollect who they were.

Q Were they in the room where Mrs. Mitchell was? And, you say Dr. Whiteside remained there all night till next morning? A Yes, sir.

Q About what time did you leave the house to go to Mrs. Mitchell's? A About 3 o'clock.

Q How far was your house from Mr. Mitchell's? A About 8 miles, I think.

Q About what time did you arrive at Mrs. Mitchell's? A About 10 o'clock, I think.

Q What houses had you to pass in going there? A We passed several houses, John Gillman's, John Thomas's, Mrs. Wilkins's and McAllan's.

Q What relation is W. C. Whiteside to Dr. Thomas Whiteside? A He is his father.

Q Did you sit up all night with Mrs. Mitchell? A Till about daylight; I suppose I slept about two hours.

Q Was Mrs. Mitchell very ill or not? A She had several attacks of epilepsy from chronic inflammation of the stomach.

Q Was any one with you when you went from your house? A Dr. Whiteside and Captain Mitchell.

Q Was any one with Dr. Whiteside when he came? A I don't remember but that his lady was with him.

Q What did John Mitchell come there for? A He came after Dr. Whiteside.

Q For what purpose? A To see his mother.

Question by Mr. Melton. Q How did you happen to go along? A Captain Mitchell asked me to go with Dr. Whiteside, with him to see his mother.

Q What age is old Mrs. Mitchell? A Over sixty, I think.

Q How far is it from his house to Captain Mitchell's? A About eight miles.

Q How far is it from Captain Mitchell's to where Charley Leach was said to have been whipped? A I think it is near four miles.

Q In what direction from Captain Mitchell's is it where Chas. Leach is said to have been whipped? A In a southeast direction, more south.

Q From Captain Mitchell's house to your house, what distance is it? A I live nearly north from him.

Q Do you know whether John Mitchell sat up? A I think he did; I don't think he lay down at all.

Q Did you see him there during the night? A Yes, sir, I did.

Q Did you take breakfast there next morning? A Yes, sir.

Q Did you have any intelligence of this Ku Klux raid before you left Captain Mitchell's next

morning? A I first heard of it after leaving Captain Mitchell's.

Q How near to the river does Captain Mitchell live? A About one-half to three quarters of a mile.

Q How far above Howell's Ferry? A Between two and three miles. I recollect, now, I heard it before I left Captain Mitchell's that morning. I also heard it on the road.

Q Who did you hear it from at Captain Mitchell's? A I think I first heard it from Captain Mitchell's son, Samuel.

Q Are you able to fix the day or the week you went to Captain Mitchell's? What month? A I think it was in the early part of January, of 1871.

Q By Mr. Corbin. Are you a member of the Ku Klux Klan?

Question objected to.

Mr. Wilson informed the witness that he was at liberty to decline answering.

A I never was.

Q Did you never make a confession to me and Major Merrill that you were a member? A No, sir, I never did.

Q Were you never present at a Ku Klux meeting? A I never was.

Q Did you never make a statement to Maj. Merrill that you were a member? A No, sir; I never did.

Q Were you never present at a Ku Klux meeting? A I never was.

Q You deny, then, all connection with the Ku Klux? A I do.

Q Have you never been inside of the organization? A No, I never have.

Q Have you never been upon a raid? A I never have.

Q Do you know anything about a meeting, at which Alberton Hope was elected chief of the Klan? A Yes, sir.

Q Were you present? A I stopped there when on a visit to a sick child.

Q Was Alberton Hope chief of a Klan? A I do not know.

Q Did you vote for him? A I did not.

Q Were you present at the meeting? A Yes, sir, for a few minutes. I was not present during the whole of the meeting.

Q Did the Ku Klux allow strangers to be present at their meetings? A I don't know.

Q How did you happen to go there? A They had a meeting in the neighborhood about the burnings in the country. It was simply a neighborhood meeting for self defense.

Q You say it was on Monday night in January? A I think it was.

Q Are you certain about that? A To the best of my knowledge I think it was.

Q What enables you to recollect that it was Monday night in January? A Well, I can tell you what. The next day I came up to McDill's; that was on Tuesday morning; and from some other circumstances—other cases that I had—I know it was on Monday night.

Q Have you any record? A I have, but not with me.

Q Have you consulted that record? A Yes, sir, I have.

Q When did you consult it? A Well, I have done it lately.

Q How lately? A Three or four days ago.

Q Where? At home, sir.

Q Yorkville? Yes, sir.

Q And that record said it was Monday night?

A Yes, sir.

Q So you cannot be mistaken about it? A I know I cannot.

Q Now what was the date? A I think it was the 9th of January.

Q Monday night, the 9th of January. A Yes, sir.

Q Did your record state whether it was Monday night? A It did not state Monday night.

Q How do you know it was Monday night? A I just supposed it was Monday night. I think it was.

Q Have you looked in the almanac to find out? A No, sir; I have not. I say it was the 9th of January. I recollect that very well.

Q You have no means of knowing it was Monday night except from general recollection. A Only my date that I have.

Q Yet you have not consulted the almanac? A I am pretty certain it was on Monday night, sir.

Q Do you know what day the 9th came on? A Day of the month?

Q Yes; or day of the week. A I don't recollect.

Q Do you know what day of the month Charley Leach was whipped? A The night that I was at Captain Mitchell's.

Q Do you know what day of the month that was? A I think that was the 9th of January.

Q Who said it was that night that they were whipped? A The way—the first I heard of it was from Captain Mitchell's son that went to the post office the next morning for some letters. I think he started after breakfast. He said Pres. Thompson was whipped.

Q You did not know of your own knowledge? A I did not. He said he was whipped that night. The report was going around all over the country the next day. I did not know that he was whipped only from what I heard everybody say in the country.

Q Do you know anybody that was present at that whipping? A I do not.

Q Anybody ever tell you they were present on that raid? A No, sir.

Q Do you know whether Joe Mitchell was present that night? A I do not.

Q Do you know whether he was at home that night? A I think Joe was at home.

Q Did you sit up that night—did you go to bed? A I think I sat up about two hours.

Q When did you go to bed? I cannot tell exactly when I went to bed.

Q What time do you think? A It might have been about four o'clock in the morning.

Q You sat up all night until four o'clock? A It was light when I got through.

Q What were you sitting up for? A Attending Mrs. Mitchell.

Q And at four o'clock in the morning you went to bed? A Yes, sir.

Q What were you doing all that time? Did Mrs. Mitchell require your personal attention all night? A Well, yes, all the time, pretty much, when I was there. I was pretty much in her room during the time I staid there.

Q How far is Mitchell's beyond the "Beauty Spot"? A I don't know.

Q Do you know where the "Beauty Spot" is? A Yes, sir, I reckon I do. I was there once when a boy. I don't recollect much about the place.

Q Was it the place where Pres. Thompson lived? A I don't know.

Q Do you know Pres. Thomason? A I never knew him.

Q Don't you recollect hearing that name particularly that morning? A I heard it the next morning after breakfast.

Q Is not it a familiar name to you? A No, sir; not at all, I don't know that I have ever seen him—never seen the boy in my life as I recollect of.

Q You don't know how far Mitchell's place is from the Beauty spot? A No, sir.

Q Is it ten miles? A No, sir; not that far.

Q Five miles? A I don't know sir; It is below Howell's Ferry and I think Captain Mitchell lives two or three miles from the ferry; how far below the Ferry it is I don't know.

Q Did you hear riding around that night? A I did not, sir.

Q Didn't hear any shooting or anything of the kind? A I did not.

Q How far does Charley Leach live from John Mitchell's? A I think he lives about four miles, between four and five miles.

Q What plantation does he live on? A I think on Mr. Smart's.

Q Did you hear he was whipped the next morning? A I don't recollect hearing anything about him next morning.

Q Now I understand you to say that John Mitchell was at home all night until four o'clock in the morning? A He was.

Q In your presence? A Yes, sir; until I laid down.

Q And Tom Whitesides was there also? A Yes, sir; he was there.

Q And that was on the ninth of January—Monday night? A I think it was.

#### TESTIMONY OF MRS MARY HOWE.

Mrs Mary Howe, called by the defense, being duly sworn, testifies as follows:

*Direct Examination by Mr. Wilson.* Q Where do you reside—in what county? A York.

Q Do you remember hearing of the raiding upon Charles Leach, and other negroes in Yorkville? A Yes, sir.

Q Where were you on the night that that was said to have occurred? A I was at Captain Mitchell's.

Q Did you live there? A No, sir.

Q How did you come to be there? A Well, I was sent for that evening, old Mrs Mitchell was taken very sick.

Q What time did you go there? A It was before sun-down a little.

Q Did any physician attend her that night? A Yes, sir.

Q What physician A Dr. Whiteside and Dr. Robert Darwin.

Q Dr. Thomas Whiteside? A Yes, sir.

Q What was the matter with her? Was she very ill? A She was very bad—something like fits or spasms.

Q Who was up there that night? A The family—the whole family.

Q Name the persons? A Mr. Mitchell—Captain John Mitchell, his wife, his sister—Mrs. Whisonant.

Q Who else? A Myself, my son Julius and Sally Howe.

Q What about the physicians? A Dr. Thomas Whiteside and Dr. Darwin was there also, all night—we all staid up there all night.

Q You set up yourselves? A Yes, sir—all night.

Q Was Dr. Whiteside in the same room where Mrs. Mitchell was? A Yes, sir.

Q Were you in that room? A Yes, sir; all night.

Q You set up with Dr. Whiteside? A I did.

Q Are you certain he was there all night? A Yes, sir.

Q What time did he and Dr. Darwin get there? A About ten o'clock.

Q What time did Dr. Whiteside leave there? A Well, it was after breakfast.

Q When did you first hear of these colored men

having been whipped—Charles Leach and Good, and the others? A It was after breakfast the next morning.

Q Do you know what day of the week this occurred—what night? A It was the 9th of January.

*Direct Examination by Mr. Melton.*—Q Who went for the physician that night? A Captain Mitchell.

Q Do you know, of your own knowledge, at about what time he left to go for the physician? A Yes, sir; he started about dark.

Q Did he return, do you know, with the physician? A Yes, sir.

Q Can you say whether or not he was at home that night after he returned? A Yes, sir; he was.

Q Through what source did you hear next morning of this whipping having taken place? A Mr. Mitchell sent his son Samuel over to the post-office for some letters, and he brought the news, when he came back.

Q Do you know whether it was brought over that night by any one else? A I don't know that it was.

Q What direction from the postoffice was Mr. Mitchell's? A Rather east.

Q Was it about in the direction of the plantation where Charles Leach was living, or do you know where he was living? A Yes, sir; he was living—no, sir; Charles Leach, I don't know where he was living.

Q You do know where the postoffice is? A Yes, sir; it is on Mr. Thomasson's plantation.

Q Do you know where Pres. Thomasson lived? A He lived on the plantation—Mr. Thomasson's—where the post-office is.

*Cross-Examination by Mr. Corbin.*—Q How do you know that it was the 9th of January? A I recollect it very well.

Q How do you recollect the date? A Well, I recollect it from circumstances.

Q What circumstances? A I know that it was on Monday night.

Q How do you know that? What enables you to recollect it? A I cannot tell you exactly now, but I recollect very well it was on Monday night.

Q When was your attention first called to the fact that it was on Monday night? A I knew by the old lady being sick.

Q What has that to do with Monday night? A I recollect that it was Monday she was very sick.

Q Can you tell any circumstance which enables you to fix this as Monday night, the 9th of January? A I don't recollect any now, just at this time.

Q When did you first think that it was Monday night, the 9th of January? A Well, I knew from the old lady's being sick.

Q But when did you first fix that fact in your mind that it was Monday night, the 9th of January? A Well, I recollect it well.

Q Any special reason for recollecting it? A I recollect that my son went down with his wife to visit her uncle's on Saturday, and it was the next Monday week that she was taken very bad. The family were all at home then.

Q Do you remember what day New Year's came on? A. It came on Sunday, I think.

Q Sure about that? A. I think so.

A. And that the next Monday night was the 9th of January? A. The next Monday night week.

Q Do you know what day of the week last Christmas came on? A. I think it came on Sunday.

Q Do you remember the date of the raid on the county treasury in York? A. No, sir; I don't remember that.

Q Are you positive that the first time you heard of the raid on Charley Leach was that morning? A. Yes, sir.

Q You didn't see Charley Leach yourself that morning? A. No, sir.

Q. Didn't see Pressley Thompson? A. No, sir.

Q. Didn't see Amos Howell? A. No, sir.

Q. Nor Charley Good? A. No, sir.

Q. Didn't learn from any of those persons that they had been whipped that night? A. No, sir; didn't see any of them.

Q. Did Mr. Mitchell's son say that he had seen any of those folks that had been whipped? A. No, sir; he didn't say so.

Q. Nobody knew out of the house that morning whether they had been whipped that night or not, except by report? A. No, sir; only by report; they didn't say.

Q. Have you been talking with anybody about these dates? A. No, sir; not particularly.

Q. Haven't you talked with Dr. Darwin and Dr. Whiteside? A. No, sir.

Q. Nor Captain Mitchell? A. No, sir.

Q. Your attention has never been called to it until to-day on the stand? A. No, sir; never.

Q. You can usually remember the days of weeks and months, can you, right along through the year? A. Yes, sir.

Q. And tell what happened on those days? A. Sometimes I can.

Q. When did you first hear of the raid on the county treasury at Yorkville? A. Well, I don't recollect now.

Q. You have got a son, Julius Howe? A. Yes, sir.

Q. Do you know whether you heard of it last March or last February? A. Well, I don't recollect. I can't tell you.

Q. You cannot tell when you heard it last? A. No, sir; I can't tell you how long it was after it happened.

Q. Can you tell when you heard of it first? A. I don't recollect now.

Q. It was a notable thing in York county, wasn't it? A. Yes, sir.

Q. But you cannot tell when you first heard of it? A. I don't recollect now.

Q. Who told you when you heard of it? A. I don't recollect that neither.

Q. Didn't your son tell you of it? A. Well, I don't think he did.

Q. Don't know whether he is a member of the Ku Klux or not, do you? A. No, sir.

Q. Now, why can't you remember that fact as you can remember this one? A. Because I had circumstances; I was at home, I suppose, when that happened. I had no circumstances that I could bring to mind now to remember that.

Q. Well, didn't you hear of a good many raids around there on colored people? A. I have heard of some.

Q. Can you fix the date of any of them, when you first heard of them? For instance, can you fix the date when Charley Good was killed? A. No, sir.

Q. When he first disappeared? A. I don't know; I didn't know him, nor know anything about him.

Q. But didn't you hear of it? A. Yes, sir; I heard of it.

Q. Do you remember when the whipping occurred down on Big Billy Wilson's place? A. I don't recollect that neither. I have heard of it.

Q. Do you recollect when you first heard of it? A. Yes, sir; I heard of it.

Q. When first? A. The next day after.

Q. What date was that—day of the month and day of the week? A. I don't recollect.

Q. How far do you live from Billy Wilson's? A. Five or six miles, I suppose.

Q. Know him well? A. No, sir; never saw the man.

Q. But you cannot tell when that whipping occurred, nor when you heard of it first? A. No, sir.

Q. Don't know whether it was in March or April? A. I suppose it was in March; cannot say exactly, though.



Q Is that as near as you can come to it? A I can't recollect when it was.

Q But this date you will fix as the true date, according to your best information and belief? A I suppose it was in March; maybe February; I am not certain.

Q What other raids do you recollect? A Well, I don't know any more in the neighborhood. I cannot recollect any more now at this time.

Re-direct Examination.—Q You say you are enabled to fix the date from the circumstances of a visit of your own to his mother-in-law? A Yes, sir; her uncle's.

Q What time did that visit take place? A That was on the last day of the year—Saturday.

Q And you recollect, you say, that it was Monday week after your visit? A Yes, sir.

#### TESTIMONY OF MRS. HANNAH N. WHISONANT.

Mrs. Hannah N. Whisonant was next called for the defense. Being duly sworn, she testified as follows:

Direct Examination by Mr. Mellon.—Where do you live? A York county.

Q Where were you living in January of this year? A I was living at the residence of my husband.

Q Where were you, though, during the greater part of the month of January? A I was at the house of Captain Mitchell.

Q How are related to him? A I am a sister of his. Q Do you recollect the occasion of your mother's being ill during that month? A Yes, sir.

Q How was she afflicted? A With nervousness and sometimes spasms; in fact, she had spasms.

Q Do you recollect who were the physicians in attendance on her that night? A Yes, sir; Dr. Whiteside and Dr. Darwin.

Q Do you recollect at what hour of the night they came? A Ten o'clock.

Q Do you know who went for them? A My brother, Captain John Mitchell.

Q Do you know at what hour of the night he left for the doctor? A Between sundown and dark.

Q When was your mother taken ill? A She was taken worse that evening; she had been in bed all through for some time.

Q Who sat up with her that night, or did any one? A There was several—myself, my sister-in-law, Mr. John Mitchell, Mrs. Howe, Miss Sallie Howe and the doctors were there; they sat up all night; my brother John sat up all night. There were others that sat up all night.

Q Were his sons there that night? A Yes, sir. Q To how late an hour were you waiting upon your mother? A I was up all night, sir.

Q Are you able to say whether Dr. Whiteside was there all night? A Yes, sir; he was there all night.

Q Are you able to say whether John Mitchell was there all night? A Yes, sir; I know he was there all night.

Q Now, can you fix what night of the week, what day of the week, this was? A It was the 9th of the month.

Q What day of the week? A It was Monday night.

Q How are you able to fix the date in your mind? A I recollect what day Christmas was, and mother was so bad; therefore, I recollect what day it was.

Q Do you know where Charles Leach lived at that time? A Yes, sir; he lived at Madison Smarr's.

Q You know him? A Yes, sir.

Q Did you hear of his having been Ku Kluxed? A Yes, sir.

Q When did you hear it? A I heard it the morning of the 10th.

Q At what hour of the day? A Tolerably early in the morning.

Q Did you hear of any others having been Ku Kluxed? A Yes, sir; I heard that they had been to Mr. Roland Thomasson's and had whipped Pres. Thomasson.

Q Did you hear of any others having been whipped that night? A No, sir; I don't recollect of any others.

Q How did you hear it? A Samuel was sent down to the postoffice, and came over and told us Mrs. John Smith had informed him so.

Q Do you know whether you heard it the next morning through any other source? A There was a boy came and said they had whipped him.

Q A colored man? A Yes; one Jerry Darwin. Q Where was he living? A At Mr. Wallace's, on Squire Darwin's plantation.

Q You heard it from those two sources; did you hear it from any other source the next day? A No, sir; I don't recollect of any.

Q How long did your mother's illness continue? A Some time.

Q How long did she continue severely ill? A She wasn't so bad but a few days.

Q Have you any knowledge of a raid made upon Captain John Mitchell at any time by the Ku Klux? A Yes, sir, during Christmas week.

Q What occurred? A They came there and said they were looking for some man.

Q Were they disguised? A I didn't see them.

Q Did you hear anything that passed? A I heard them talking, but didn't see them.

Q What happened? What was the nature of their visit? A I have told you, I believe, about all I know.

Q Did you hear of their making any threats with reference to John W. Mitchell? A I didn't see them. I heard that they did make threats to him—he must join.

Mr. Corbin. That is too remote.

Mr. Melton. Not so very remote. He was himself raided upon Christmas week, and threatened.

Q I have asked you if you heard the threats made? A No, sir; I didn't hear them.

Mr. Melton. I now propose to ask whether, immediately after the occurrence, John Mitchell said that had been the occasion of the visit, and what had passed between him and these parties.

Mr. Corbin. I don't think that is evidence.

The Court. It is not evidence. Anything that may tell against him would be evidence, but not something he had said in his favor.

Mr. Melton. We propose to show it was a hostile visit of the Ku Klux upon him.

The Court. You may show it, but you may not prove it through him.

Q That was Christmas week? A Yes, sir.

Cross-Examination by Mr. Corbin.—Q As I understand you, the only mode by which you are enabled to recollect that this was on the 9th of January, on Monday night, is that you reckon back to Christmas day? A I had been staying there for some time; therefore I know what day it was; I had been staying at my brother's, with my mother.

Q How long previous to that had you been staying? A Three or four days.

Q How are you enabled to reckon back then to Christmas and fix the day in that way; can you account for every day from Christmas up to that time? A I know the day I left home and I know the day mother was taken sick.

Q How do you know that; what enables you to recollect? A By her being so bad.

Q Her being so bad had nothing to do with Monday night, had it? A Of course, I knew that mother was sick.

Q I have no doubt you knew she was sick; but what enables you to remember that it was Monday night? A I have told you, sir.

Q What do you say now about it; what enables you to remember? A I have told you that I can count back from the time Christmas came on.

Q What day was Christmas of the week? A It was Sunday.

Q What day of the week was New Year? A Sunday.

Q Now, where were you from Christmas day to New Year? A I was home part of the time and part of the time at brother John's.

Q What day were you at your brother John's, between Christmas and New Year? A I was there Thursday, I believe it was.

Q Are you sure? A I believe that was the day.

Q Are you certain about it? A As well as I recollect, that was the day.

Q Are you willing to swear positively that was the day? A To the best of my recollection.

Q You won't say absolutely whether it was Tuesday or Wednesday or Thursday? A I will tell you I was there several days between Christmas and New Year's.

Q How long did you stay there? A Stayed for some length of time.

Q How many days? A From the time I first went, I was there some ten or twelve days.

Q You went after Christmas and stayed there? A Until mother got better.

Q. Now, how many days was it after you went to John Mitchell's before your mother was taken sick so badly? A. It was on Thursday, and she was worse Monday following.

Q. Positive about that, are you, that you went there after Christmas, and she was taken sick the Monday following—certain about that? A. To the best of my knowledge, that was the time.

Q. And that is the way you are enabled to remember it was on the 9th of January? A. Yes, sir.

Q. And you heard next morning, that is on Tuesday morning, after your mother was taken sick for the first time, that Charley Leach had been raided upon? A. Yes.

Q. Do you know Charley Leach? A. Yes, sir; I knew him.

Q. Colored man? A. Yes, sir.

Q. You didn't see him? A. No, sir.

Q. Do you know Presley Thomasson? A. No, sir; I don't know him; I have seen the boy.

Q. Do you know Charley Good? A. No, sir; I never saw him, to my recollection.

Q. Did you hear next morning that all these persons had been raided on? A. I heard those two—Pres. Thomasson and Charley Leach.

Q. You don't know whether it was so or not, do you? A. No, sir; of course I don't.

Q. It might have been any other night, for all that you know. Might it not have been Monday night, as far as you know? A. They said they were whipped on Monday night.

Q. You have never seen any of them since, have you—Thomasson, Good, or Leach—and learned from them what night they were whipped? A. No, sir; I have not asked them anything about it.

*Re-direct Examination.*—Q. Were you at your mother's during what we call Christmas week? A. Yes, sir.

Q. Did you remain there from that time until your mother took sick? A. Yes, sir; and some time afterwards.

Q. You didn't leave from the time you went there, Christmas week, until after your mother was taken sick? A. No, sir.

Q. How long after? A. She was taken sick; before she was taken so ill, on this night. She was poorly for a day or two previous, and on Monday she took worse.

Mr. Melton. When people speak of Christmas, ordinarily, they mean the week; they do not mean the day; and when they say Thursday after Christmas; they don't mean Thursday after Christmas day, but Thursday after the holidays. My friend has charged his offense as having been committed on the 20th of December, and, until his own witnesses came upon the stand, I didn't know that they would prove the fact that it was on the day our witnesses would prove it. That was my fear in the whole case.

Mr. Corbin. The witness has stated that she went there on Thursday after Christmas, and the next Monday was when her mother took sick.

Mr. Melton. She didn't say after Christmas day, though.

#### TESTIMONY OF MISS SALLIE HOWE.

*Examination-in-Chief by Mr. Melton.*—Q. How are you related to Mrs. Howe? A. I am her daughter.

Q. How near do you live to Mr. John Mitchell's? A. It is about a quarter of a mile.

Q. Are you related to Captain Mitchell in any way? A. No, sir; I am not.

Q. Have you any recollection of being at his house on the occasion when his mother, Mrs. Mitchell, was ill? A. Yes, sir; I was there.

Q. Are you able to fix the date? A. I cannot tell the date.

Q. Can you say what day of the week it was? A. I do not recollect.

Q. What caused you to be there? A. Mrs. Mitchell was very sick and sent for mother and myself, and we went.

Q. Who went? A. My mother, myself and my brother.

Q. What time of the day did you go there? A. It was in the evening.

Q. Do you know whether the doctor was sent for that night or not? A. Yes, sir.

Q. Do you know who went for him? A. Yes, sir; Captain Mitchell.

Q. Do you know at what time he went for the doctor? A. It was about dark.

Q. Do you know what time the doctor came? A. About ten o'clock, I think, sir.

Q. What persons came? A. Dr. Darwin, Dr. Whiteside and Captain Mitchell.

Q. Who sat up all night with Mrs. Mitchell? A. We all sat up; mother and myself and Mrs. Whitsonant sat up all night.

Q. Do you recollect whether Captain Mitchell was there that night? A. Yes, sir; he was there all night; he came back about ten o'clock; he never was away all night.

Q. Do you say you are not able to fix the day of the week. Can you tell us what month it was? A. It was in January.

Q. Have you any certain impression upon your mind how long after Christmas it was? A. No, sir.

Q. Can you say how long it was after New Year's day? A. No, sir; it was not long.

Q. How long did you remain at Captain Mitchell's? A. I stayed there all night and left there next morning—about nine o'clock, I suppose.

Q. Had you heard anything of this Ku Kluxing before you left there; I mean on Pres. Thomasson and Charles Leach and Charles Good? A. Yes, sir; I heard that soon after breakfast.

Q. Do you remember how you heard it? A. Yes, sir; Samuel Mitchell went over to the postoffice and told us when he came back that Pres. Thomasson and Charles Leach had been whipped.

Q. Did you hear they had been whipped that night? A. Yes, sir; Charley Leach and Pres. Thomasson.

Q. Did you hear it from any other source next day? A. No, sir.

Q. Can you say whether Dr. Whiteside remained there all night or not? A. Yes, sir.

Q. Did Dr. Darwin remain all night? A. Yes, sir.

*Cross examination by Mr. Corbin.*—Q. Have you a brother named Julius Howe? A. Yes, sir.

Q. Does he live at home with you? A. Yes, sir.

Q. Where was he that night? A. He was at Captain Mitchell's.

Q. Do you know whether he is a member of the Ku Klux Klan? A. Well, I do not.

Q. Did you ever hear him say? A. No, sir; I was never at a meeting of the Ku Klux Klan.

Q. You don't know whether he was or not? A. No, sir.

Q. You say you don't know what night it was in January? A. No, sir.

Q. Did you see anybody who had been whipped yourself? A. No, sir; they said Charley Leach and Pres. Thomasson; I know they were whipped that night; I saw Samuel Mitchell, and he said so.

Q. But he did not see those two colored men and they did not tell him they had been whipped? A. Well, he said he had heard it.

Q. Then you heard him say that he heard that those two men had been whipped that night, and that is all you know about it? A. Yes, sir.

Q. Did you know those boys yourself? A. Yes, sir; I knew Pres. Thomasson.

Q. Did you know Charles Leach? A. I did not know him.

Q. Did you ever talk to Thomasson about being whipped that night? A. No, sir.

#### TESTIMONY OF SAMUEL MITCHELL.

Samuel Mitchell was next called for the defense, and, being duly sworn, he testified as follows:

*Direct Examination by Mr. Melton.*—Q. What relation are you to Captain John Mitchell? A. His son.

Q. What is your age? A. Fourteen.

Q. Do you recollect the night your grand-mother was sick? A. Yes, sir.

Q. Who was there that night? A. Mrs. Howe, and Miss Sallie Howe, and Mr. Howe, and pa, and Joe, and Dr. Tom Whiteside, and Dr. Darwin.

Q. Were you up that night? A. I was up till about twelve o'clock.

Q Do you know whether your father was at home when you went to bed? A Yes, sir; he was sitting in the room when I went to bed.

Q What time did you get up next morning? A I got up just after daylight a while—about daylight.

Q When did you hear of Charles Leach being whipped? A I heard it next morning down at Mr. Smith's.

Q How came you to be there? A I went down there to take some letters to the postoffice.

Q Is it kept at John Smith's? A Yes, sir.

Q Whose place does he live on? A Mr. Thompson's.

Q Do you know where Pres. Thomasson lived? A Yes, sir.

Q Where? A He lives on that place.

Q Do you know where Charles Leach lives? A Yes, sir. He lives at uncle Mat. Smarr's.

Q What did you hear at Mr. Smith's that morning? A That the Ku Klux had been there and whipped them.

Q When did you understand that that they had been there? A That night.

Q Did you understand who they whipped? A Yes, sir. I understood that they whipped Charles Leach, and Butler Smarr, and Pres. Thomasson, and three or four more.

Q Was that the first you heard of it? A Yes, sir.

Q Where did you go after you left the postoffice? A Came back home.

Q Did you there tell what you had heard? A Yes, sir.

Q Do you know of any other person coming next morning and telling about this whipping having taken place? A No, sir; I don't recollect any other.

Q Any colored man, to your own knowledge? A No, sir. I don't recollect.

Q Do you recollect anything of your father having been visited by the Ku Klux at any time? A No, sir.

Q Any recollection of any Ku Klux having come to his house? A Oh, yes, sir; some came to his house one night.

Q When was it? A I don't know when it was; I don't know the date.

Q Was it before or after Christmas? A It was in Christmas.

Q What do you mean by Christmas? A Well, about the middle of Christmas.

Q You mean the Christmas holidays? A Yes, sir.

Q How many men came there? A I seen seven.

Q What did they do? A They run all about over the house.

Q Were they disguised? A Yes, sir.

Q How long did they remain? A About half an hour, I reckon.

Q Tell us what they did besides running over the house? A I heard them ask pa was he a Ku Klux, and he told them no, and they said: "Well, damn you, you have got to be." Pa says: "I won't," and they said: "It is all right," and they went into another room.

Q Did you know any of the men? A No, sir.

Q Did you see any of them unmasked? A No, sir; none that I know of.

Q Did the men say what they came there for? A They said there was a man stole a horse, and they was coming down looking for him.

*Cross-Examination by Mr. Corbin.*—Q. Are you a member of the Ku Klux Klan? A. No, sir.

Q Did your father ever swear you in? A. No, sir; he did not.

Q Who did swear you in? A. Nobody swore me in.

Q You have seen men riding at night with their masks on? A. No, sir; I never did.

Q. You saw those six or seven men that night? A. Yes, sir; I saw them.

Q. You saw them running about all over the house? A. Yes, sir.

Q. Did they go up stairs? A. Yes, sir.

Q. What for? A. Looking after that man.

Q. What man? A. I don't know who he was. The man they supposed stole the horse.

Q. Did your father go with them? A. Yes, sir.

Q. Did they go down into the cellar? A. We got none;

Q. Did they look into all the rooms? A. Yes, sir.

Q. Was your father afraid of them? A. I don't know whether he was or not.

Q. He did not appear to be? A. No, sir; he didn't appear to be so much.

Q. Was he afraid at all? A. I don't know; you must ask him that.

Q. Were you afraid? A. Yes, sir; I was pretty afraid when they first came.

Q. Could you tell who they were? A. No, sir; I could not tell.

Q. And they told your father that he had got to be a Ku Klux? A. Yes, sir; that is what they told him.

Q. And he told them he could not? A. Yes, sir.

Q. Did they whip any colored people on your place that night? A. No, sir.

Q. Did they visit other colored people in the yard? A. We got none.

Q. No one that lived on your place? A. No one but a negro girl.

Q. Were there no other colored people working for your father? A. No, sir; I believe not at that time.

Q. Your father used to be away nights, did he not? A. No, sir; not that I know of.

Q. You never knew it? A. No, sir.

Q. Do you know whether he had any masks or Ku Klux gowns? A. No, sir; I do not know.

Q. Did you never see him have a bag full of them? A. No, sir.

Q. Never saw a bag of that kind round the house? A. No, sir.

Q. Never saw him coming home any time with a bag full of clothes or something? A. No, sir; I never saw him come in at no time with anything like that.

Q. Do you know whether the horses used to be ridden nights? A. No, sir; if they were, they did not show it next morning.

Q. Did you take care of the horses? A. Yes, sir; I fed them.

Q. Did your brother Joe used to be out nights? A. No, sir; he never was out.

Q. Was he never out at night last winter at all? A. No, sir; not that I know of.

Q. Do you and he sleep together? A. Yes, sir.

Q. Was he always at home? A. Yes, sir; he was always at home.

Q. Where is your brother Joe? A. I don't know, sir, where he is.

Q. How long has he been gone? A. I reckon he's been gone about a month or six weeks.

Q. Do you know what made him go away? A. No, sir; he did not tell me.

Q. He went away very suddenly, did he not? A. Yes, sir; I saw him that one day, and that is the last I saw of him.

Q. You did not see Charles Leach that morning as you went to the postoffice, did you? A. No, sir.

Q. Mr. Pres. Thomasson? A. No, sir; I didn't see neither one.

Q. You did not know, then, from what they said, that they had been whipped that night? A. No, sir.

Q. Who was it told you? A. Mrs. Smith.

Q. She told you that they had been whipped? A. Yes, sir; I reckon that she just told me that they were whipped.

Q. Did she tell you how she heard that they had been whipped? A. No, sir; she did not tell how she had heard it; she said the negroes were there that night, and whipped the negroes round the house—Pres. Thomasson and all the rest of them.

Q. Where was this postoffice? A. At John Smith's.

Q. Were any negroes whipped on the place that night? A. Yes, sir; Pres. Thomasson.

Q. Did you see him? A. No, sir.

Q. What negroes did you see that were whipped that night? A. Pres. Thomasson, Charley Leach, Butler Smarrs and three or four more that were whipped.

Q. You heard that down at the postoffice? A. Yes, sir; I heard it.

Q. How early in the morning was that? A. After sun-up awhile; about half an hour or so.

Q. How far off was the farthest of those you have mentioned from the postoffice? A. They live about a mile, I reckon.

Q. Then the farthest one of those that were whipped lived a mile from the postoffice? A. Yes, sir.

Q. How far was it from your house to the postoffice? A. Two miles and a half.

Q. So that all those colored people who were whipped that night live within three and a half miles of your home? A. Yes, sir.

Q. Are you sure of that? A. Yes, sir.

Q. And yet you did not see any of them, nor hear any of them say that they were whipped that night? A. No, sir; I didn't see any of them that day, nor hear any say that they had been whipped.

Q. Did you hear any noise or hallooing that night? A. No, sir.

Q. Were you up till twelve o'clock? A. Yes, sir.

Q. You live on the Howell's Ferry road? A. No, sir.

Q. How far from it? A. About two miles above it.

Q. How far is the Howell's ferry from your house? A. About two miles and a half.

Q. How far is Madison Smarr's place from yours? A. About a mile.

Q. Do you know where Dave Ferrester, a colored man, lived? A. No, sir.

Q. Did you say he was whipped that night? A. No, sir; I did not hear it.

Q. Do you know what the Ku Klux signs are? A. No, sir.

Q. Have you never been told by anybody? A. No, sir; never was told by anybody.

Q. Do you know what the grip is? A. No, sir; I don't know anything about that either.

Q. Did your brother Joe never tell you? A. No, sir.

Q. Did you ever see your father bring home a double-barrel shot gun in the morning? A. No, sir.

Q. How many double-barrel shot guns had you in the house? A. Ain't got any.

Q. Never had any? A. Yes, sir; we had Mr. Howell's awhile; I borrowed it to go hunting with.

Q. But you have never seen any gun brought home in the morning, or any appearing suddenly in the morning? A. No, sir; none.

Q. Has there been none round the house lately? A. No, sir; there ain't been none round there lately that I know of.

Q. Don't you know that your father had a double-barrelled shot gun, and that it was given up to Colonel Merritt a few days ago? A. Yes, sir; I know that.

Q. Where did that gun come from? A. From McCowans.

Q. When? A. I don't know what time it was. I seen him fetch a gun up to pa. He owed pa something and fetch the gun and gave it to him for the debt.

Q. When? A. I don't know what time or the month it was.

Q. Was it last spring or this fall? A. This fall; I believe it was.

Q. How long ago? A. It has been about three weeks ago.

Q. Did you never hear whose gun it was? A. No, sir; I never heard till lately it was Mr. Plexico's.

#### TESTIMONY OF THOMAS BOLEN.

Thomas Bolen was next called for the defense. Being duly sworn, he testified as follows:

*Direct Examination by Mr. Wilson.*—Q. Do you remember the night of the raid in search of John Thomasson, at Bill Wilson's gin house. A. Yes, sir.

Q. Is John Thomasson the husband of Mary Robinson, as she is called? A. Yes, sir.

Q. Was Dr. Whiteside with the party that night?

The Court. That won't do; that is a leading question. Ask who were with the party that night.

Q. Who were in the party? A. Allen Crosby, Sherod Childers, Hezekiah Porter, myself and Van Hemphill.

Q. Was that the night that Mary Robinson was whipped? A. Yes, sir.

Q. Do you know Dr. Thomas Whiteside? A. Yes, sir.

Q. Do you know where he was that night? A. No, sir.

Q. Did you see him that night? A. No, sir.

Q. Did you see him in the party that night? A. No, sir.

Q. Do you know who was at this gin house? A. Yes, sir.

Q. Was Dr. Whiteside one of those men or not? A. No, sir.

Q. You were along with the party that night? A. Yes, sir.

Q. You know then that Dr. Whiteside was not one of the men that went to the gin house? A. He was not.

Q. Do you know of Dr. Whiteside being on any raid? A. No, sir.

*Direct Examination by Mr. Mellon.*—Q. How many were of the party that night? A. Six, sir.

Q. Name them again. A. Allen Crosby, myself, Sherod Childers, Hezekiah Porter and Van Hemphill.

Q. That is only five; name them again. A. Myself, Sherod Childers, Hezekiah Porter, Evans Murphy, and Van Hemphill, and Allen Crosby. That was the crowd, sir; Allen was in command.

Q. Do you recollect what time it was? A. It was along when I was rising up cotton ground—about the first of March, or sometime along there; I don't remember the date. Allen Crosby came and told me they was to make a raid that night. He came after me.

Q. And you say that was the night Mary Robinson was whipped? A. Yes, sir.

Q. It was on Wilson's place? A. Yes, sir.

Q. Did you see anything of Mr. Mitchell that night? A. No, sir.

Q. Do you know him, Capt. John Mitchell. A. Yes, sir.

*Cross Examination by Mr. Corbin.*—Q. Do you know John W. Mitchell? A. Yes, sir.

Q. Is he a Chief of a Ku Klux Klan? A. He is said to be.

Q. In Yorkville? A. Yes, sir.

Q. Are you a member of the Klan? A. Yes, sir; I joined the party.

Q. What Klan did you join? A. I was taken in with—Hood and Alf. Hood. A short time after I was in, I was told it was John Mitchell's Klan.

Q. Did you ever attend a meeting at which he was present? A. Yes, sir; I think I did.

Q. What meeting was that? A. The Wm. Kell raid.

Q. Was John Mitchell there? A. Yes, sir.

Q. Took command of the Klan? A. I suppose he was going to command the Klan; he was there.

Q. Are you sure of that? A. Yes, sir.

Q. Do you know him well? A. Yes, sir.

Q. What was the Bill Kell raid for? A. I do not know what the intention was. That was the first time I ever met after I joined the Ku Klux Klan.

Q. You met there for the first time? A. Yes, sir.

Q. Was that the Mitchell Klan? I suppose it was the Mitchell Klan; it was called the Mitchell Klan, and Capt. Mitchell was there himself.

Q. Did the party have disguises? A. Some was in disguise when I went and some was not.

Q. The raid fell through, did it not? A. Yes, sir.

Q. What was done with the disguises when you got through? A. They were taken up and taken home, I suppose.

Q. Who took them home? A. I do not know.

Q. Did you see Captain Mitchell put them in a bag? A. No, sir.

Q. You don't know whether he did or not? A. No, sir.

Q. This was the first raid you ever went on—this Bill Kell raid? A. Yes, sir; it was.

Q. What was the date of that? A. It was in January some time; shortly after I became a member.

Q. When did you become a member? A. Along in January.

Q. About what time in January? A. I cannot tell what time it was, but it was along in January—

maybe about the fifth or tenth—somewhere along there, but I cannot tell the day of the month.

Q How long after you were initiated was it that this Bill Kell raid was ordered? A It was not long.

Q How long? A I am not able to state, but it was a short time ten or fifteen days or a week; somewhere along there; might have been longer than a week.

Q Was it not less than a week? A I do not think it was.

Q That was your first raid, a week after you were initiated? A A week or more maybe; somewhere along there.

Q How long after that raid was it that you went upon the raid upon Bill Wilson's place at the gin house? A Along about the first of March, I think; I was raising up cotton grounds, and Alton Crosby came and told me.

Q It was not on the ninth of January, was it? A I do not know; I think somewhere along through the last or first of March; I cannot tell the date.

Q Do you know whether or not Dr. Whiteside or Captain Mitchell were on the raid on the ninth of January? A What raid?

Q The raid on Charley Leach and Charley Good? A No, sir; I do not know.

Q Were you not upon that raid? A No, sir.

Q Did you ever hear them talk about it? A No, sir.

Q Do you live in that neighborhood? A Yes, sir; I live about a short mile from Mr. Wilson.

Q Did you ever have any conversation with Charles Foster, at the time he and you came out of jail, about Dr. Whiteside? A About Dr. Whiteside?

Q Yes. A No, sir; I do not remember.

Q Did you ride home from Yorkville with Foster? A No, sir; I drove the wagon and he rode in the wagon—he rode in the wagon and I was on the mule driving.

Q Did you have any conversation with him on that occasion about Captain Mitchell or Dr. Whiteside? A I don't think I did; don't remember.

Q Do you remember whether you did or not? A No, sir; I heard Mr. Foster state before we left.

Mr. Wilson We object to declarations of Mr. Foster.

The Court. He has given them already.

Mr. Corbin. You have been swearing about the declarations of Foster here for a long time.

Q What Mr. Foster said. Go on. A He said that he was a member of Mr. Mitchell's Klan.

Mr. Corbin. Well, I don't want that.

Q In that connection, while you were driving home, was big Billy Wilson in the wagon riding too? A Yes, sir.

Q Did you hear any conversation there about Dr. Tom Whiteside? A No, sir; I don't think I did; they was talking a little, but I was driving, sometimes in a trot, and sometimes hurrying to get home, and I didn't hear it.

Q You didn't have a conversation and didn't hear any? A I heard them talking back in the wagon body about him being in jail, and so on.

Q Didn't hear talk about Dr. Tom Whiteside? A No, sir; not as I know of.

Mr. Melton. We were very anxious to close the testimony this evening, but a very important witness, whose testimony is not cumulative, has failed to appear, and we must ask your honors to indulge us, because his testimony is too important to omit.

The Court. Is the witness in town?

Mr. Melton. Yes, sir.

The Court. Then let us issue an attachment. Mr. Melton. He is a colored man, and I feel constrained to call your honors' attention to the fact that we have great difficulty in keeping these witnesses. We have had one who has gone home because threats were made against him.

The Court. Issue an attachment, and let him report such facts as that to the court.

Mr. Melton. This is not the witness.

The Court. Any witness.

Mr. Corbin. If the counsel interested will give me the facts, every person who interferes in any way to intimidate and obstruct witnesses shall be prosecuted and indicted before this court.

Mr. Melton. I am perfectly willing to give the counsel the names of the witness and the parties who have interfered to prevent him from testifying.

The names of Kirkland L. Gunn and Charles W. Foster were given to the District Attorney as having told Moses Edwards, a colored man, that, if he testified for Capt. Mitchell they would "make him smoke for it," and the court ordered the name, with the evidence, to be sent before the grand jury. At half-past three o'clock, the court adjourned.

## NINETEENTH DAY'S PROCEEDINGS, DECEMBER 21.

The Court met, pursuant to adjournment. Hon. H. L. Bond, presiding; Hon. George S. Bryan, Associate Judge.

### TESTIMONY OF MAJOR GUITON.

Major Guiton, a witness for the defense, being duly sworn, testifies as follows:

*Examination-in-Chief by Mr. Wilson.*—Q. Where do you live? A. In York county, Bullock's creek township, where I have lived for the last twelve months.

Q. Where did you live last December? A. At Geo. Hood's, on Broad river.

Q. Did it at any time come to your knowledge of any plan that was on foot for the burning of houses in that neighborhood? A. Yes, sir.

Q. From whom did you obtain that information? A. Reuben Kennedy; he is a colored man.

Q. Where did he live? A. At Bullock's creek, on John Whiteside's place.

Q. What did he tell you? A. That there were two men in Union, Jim Feeler and Alfred Owens; he said that there ought to be several houses burned, because of stopping that killing.

Q. Whose houses did he mention? A. Dr. Tom Whiteside's was one; house, John Smith, Captain Mitchell and John M. Whiteside was others.

Q. On which side of the river are these houses? A. On the York side.

Q. Was anything said about other houses that were to be burned? A. Sam Jeffery's; in Union; John McCullough, and Colonel Jefferys.

Q. Where do they live? A. In Union.

Q. How many houses, in all, was it proposed to burn? A. Four in York county.

Q. What time did you get this information? A. About the first of December. I cannot exactly say when.

Q. Did he tell you what was the plan, and what hour of the night those houses were to be fired? A. He said it ought to be done at such a time of the night.

Q. Do you know how many houses he mentioned were to be burned? A. Four in York county and three in Union, I think.

Q. Did he state his object in telling you this? A. Yes, sir; he said it was very frightening to every man in the country, this killing and raiding, and he said this was the plan to stop that killing.

Q. Did you join in the scheme? A. Not at all; he did not ask me.

Q. Did you communicate this information to any one? A. I did to Equire Hood; he was the first man, and to Madison Small and Capt. Mitchell.

Q. How soon, after it was told you, did you tell them? A. Nigh as I can come at it, it was about three days.

Q. At that time, had there been any killing on this side of the river? A. There had not been any raid on this side at all.

Q. Do you know any parties who were engaged in

that scheme, except the one that spoke to you about it? A. I don't.

Q. Were you at any time told by Captain Mitchell to give warning to some colored people that violence was threatened them? A. Yes, sir; I was.

Q. When was that? A. I cannot exactly tell the time; but it was some time after the raid was made in Arkville.

Q. Who were the persons that you were to notify? A. Jack Dowden; Edward Gulton and Butler Askew.

Q. What did he tell you to tell them? A. He said he was going to Wileys' store one day and found a paper lying in the road; he picks it up and found three names written on the paper that were threatened; he told me to tell them I was very late that evening; that was Jack Dowden. I could not see the others.

Q. What did you learn next morning? A. The next morning I understood that Jack Dowden and my brother, Edward Gulton and Butler Askew had been whipped.

Q. Do you know Captain Mitchell? A. I have known him all my life, since I knew anything at all.

Q. What is his character in the neighborhood? A. He has a mighty fine character.

Q. What is his character among the colored people? A. A mighty fine character; a mighty good character.

Q. How was he disposed toward the colored people? A. Like as if he wanted them to live and do well; if they were responsible people and wanted help, he would let them have anything to support them, and they were to go to him for it.

Q. You mean that he was kindly disposed towards the colored people? A. He was.

Q. What party did you belong to? A. The Radical party.

Q. Did you vote the Radical ticket the last election? A. Yes, sir; I did.

Q. What box did you vote at? A. Hickory Grove.

Q. Which is the strongest party at [Hickory Grove]? A. The Radical party.

Q. Were any threats used to hinder you and others from voting? A. Never sir; he never hindered me.

Q. Have you ever seen others hindered? A. No, sir; and I voted there all the time.

Cross-Examination by Mr. Corbin.—Q. Do you know Charles Foster? A. Yes, sir.

Q. Did you tell last February or March, right near your house, that you wanted him to circulate the information about that you were a Democrat? A. I did not, sir; I can prove how I voted at the election.

Q. Did you circulate round so that people might know what your politics were? A. No, sir; I didn't.

Q. Are you sure? Yes, sir; I am.

Q. Do you work for Capt. Mitchell? A. No, sir.

Q. He told you he found this paper on the road about whipping these men? A. Yes, sir.

Q. And he told you to go and notify them, did he? A. Yes, sir; he told me to go and advise them, but I had not time; it was only about an hour and a half before sundown.

Q. What day of the month was that? A. I think it was in December, after Christmas.

Q. Was it after New Year's day? A. Of course.

Q. How long after New Year's day? A. I don't know exactly; it might be about two weeks.

Q. Could it have been more than four weeks? A. It might have been that long.

Q. Where did he tell you that? A. I passed his house and he was feeding his stock when I passed, and we had the conversation.

Q. He seemed to be anxious, did he, that you should go and tell those men to get out the way? A. He didn't seem anxious, of course, but he did not want them to be hurt.

Q. How far did Jack Dowden live from you? A. About two miles.

Q. And was about an hour and a half before sundown when he told you? A. Yes, sir.

Q. And you did not tell the others because you had not time? A. Yes, sir; I wanted to get home; I had my own business to attend, and I had been away ever since Saturday, and I only had time to tell Jack Dowden.

Q. Capt. Mitchell seemed rather anxious that you should go and see them? A. He was not anxious, but, as he found out that they were threatened, he would like very well for them to know it, and he said he thought it was my duty to tell them.

Q. Did he show you the paper he said he had found? A. He said he had just picked it up, and when he had read it, he threw it down.

Q. And these men, you say, were whipped that night? A. Yes, sir; they were.

Q. What time? A. I don't know.

Q. Did you tell Jack Dowden who gave you the information? A. I don't recollect now.

Q. And did he then ask you who told you? A. I told him there was a paper found on the road, and his name was on it, and Edward Gulton, and Butler Askew; and I advised them to be particular, but I did not tell them that Captain Mitchell told me.

Q. Have you told us all that Captain Mitchell told you? A. Yes, sir.

Q. Why did you not go to tell them that the Ku Klux were coming? Did you not care anything about the Ku Klux? A. I didn't know when they were coming; I only knew we were all frightened.

Q. Didn't you then think it worth while to tell them that they were all threatened? A. I did not know but it might be twelve months from that day.

Q. You say you told Captain Mitchell and Squire Hood, and Dr. Whiteside that this colored man Kennedy was going to burn them up; did you tell them who was going to do it? A. I didn't know.

Q. Did you tell them that Reuben Kennedy told you? A. I did; and I told all the conversation between us.

Q. And you had a good deal more anxiety about fires than about men being whipped and killed? A. No, sir; I did not; for I was as much scared as any of them by the Ku Klux.

Q. And yet you did not tell your brother he was going to be whipped? A. If I thought I should not be belated, and that I might likely be killed myself, I likely should have told him.

Q. Were you afraid of Captain Mitchell? A. I was not afraid of him; but I was afraid of the whole country.

Q. Were you ever whipped? A. No, sir.

Q. You felt safe, didn't you? A. So, sir; I didn't.

Q. You say Kennedy got up this plan to stop the killing? A. Yes, sir.

Q. What were the politics of those two men that were killed in Union? A. I don't know exactly; I never saw either of them; they were Radical, I had heard.

Q. And this plan, Kennedy said, was to get up these fires to stop the killing? A. Yes, sir.

Q. Did he carry it out? A. I don't know, sir.

Q. Where is this man? A. I don't know; he moved away to Mississippi. I don't know what time, but it was after Christmas.

Q. Did he stay in the country long? A. No, sir.

Q. Did the Ku Klux ever raid on him? A. As I recollect, they were at his house one time.

Q. Was that before or after this? A. He told me before they ever went to his house.

Q. How long before? A. I don't know. I think he told me before Christmas, and they raided on him after Christmas.

Q. What did they do to him? A. I don't know; but I understood they were there.

Q. Had not Tom Roundtree been killed about that time? A. I don't know.

Q. How long before Christmas was it that Kennedy told you this? A. I don't know exactly how long. I think it was some time in September.

Q. What year was it? A. It was last year.

Q. Are you sure of that? A. Of course.

Q. Are you sure it was in September? A. I think it was some time in September.

Q. How do you know it was in September? A. I cannot recollect the date, because there has been so much done in the country; I am not like a white man, but I know it was in September; all the citizens, white and black, know it was in September when this thing began.

Q. What began? A. When these men were killed.

Q. Are you sure of that? A. That is my recollection.

Q. It was after that killing that Kennedy told you this? A. Yes, sir.

Q. And Kennedy lived on his place from September until these two men were killed in January? A. Yes, sir.

Q. Where did he live? A. At John Whiteside's.

Q. Did he live there in September? A. Yes, sir.

Q. In October? A. Yes, sir.

Q. In December? A. Yes, sir; he was there part of January.

Q. Did he live there in February? A. I don't recollect whether he did or not.

Q. Did he live there in March? A. I don't know, but he was there Christmas.

Q. Don't you know when he told you this plan about the burning? A. It was some time in September.

Q. Are you quite sure about that? A. Yes, sir.

Q. When did he say they were going to commence? A. He did not say.

Q. Did he tell you who was in it? A. No, sir.

Q. Did he say he was in it? A. He said what ought to be done.

Q. Did he tell you there was any fixed plan about it? A. He didn't.

Q. But he thought it ought to be done to stop the killing? A. Yes, sir.

Q. Did he tell you that it was a plan to stop the killing? A. Yes, sir.

Q. Did you agree with him? A. No, sir; I told him "you will make bad worse."

Q. You say you thought burning would make bad worse? A. Yes, sir.

Q. And you thought burning was worse than killing? A. No, sir.

Q. What did you advise him to do? A. I had very little to say any way.

Q. Was this conversation before or after he told you? A. It was after.

Q. When was the election? A. Some time in October.

Q. And it was after this election that he told you this burning was to stop the killing? A. It was after the election in September or October.

Q. Which month comes first? A. September comes before October.

Q. You say he told you in September; now you think it was in October? A. There was no election last October.

Q. You know that as well as you knew anything else, do you? A. You ain't got me right.

Q. How long after you heard that these two men, Owens and Kealer, were killed, was it that he told you? A. I don't think it was longer than three days.

Q. Are you sure it was before Christmas? A. Yes, sir.

Q. You say you told John P. Hood? A. Yes, sir.

Q. Is he at home now? A. He was not when I left. He has been away six weeks or two months.

Q. Where is Madison Smarr that you also told? A. I don't know; he is away. He went away about the same time Squire Hood did.

Q. Then Captain Mitchell is the only one left in that county you told it to? A. Captain Mitchell is the only one left.

Q. What did they tell you they were going to do about it? A. They just told me that white and black ought to come together, and have meetings and make peace as they could; that the two parties ought to come together and have peace.

Q. Who told you that? A. Captain Mitchell said there ought to be a meeting, and come together and try to have peace; Squire Hood and Madison Smarr told me the same thing.

Q. Had the colored people been united with the white people up there? A. Not as I know of.

Q. Do you know whether this man Kennedy ever set any places on fire? A. I don't know at all.

Q. Did you ever hear him charged with starting fires? A. No, sir; I never heard of it.

Q. Then he simply expressed his opinion to you? A. Yes, sir; of course—that is the way I take it.

Q. Was Jack Dowden, Edward Guiton and Butler Askew, Republicans? A. Yes, sir; but Butler Askew didn't vote; he was too young.

Q. You say that Captain Mitchell sustains a

good character with the colored people? A. He does.

Q. Did you ever hear that he raided on the colored people and whipped them? A. If he did, I never heard it.

Q. Did you never hear it till he came here? A. I heard he was reported and went to prison, but I never heard anything after he was in prison; I never heard he was accused of it.

Q. Did Keller and Owens live right on the Broad River? A. Yes, sir; Owens lived about six miles from me, and Keller lived about ten miles up Broad River.

Q. The killing of these men made a great excitement in the county, did it not? A. Yes, sir.

Q. Did you understand that they were killed because they were Republicans? A. I didn't understand that it was because they were Republicans.

Q. When Tom Roundtree was killed did that make much excitement? A. There was so much excitement that I don't know that that made any more excitement. The excitement was all over the State.

Q. Did you hear what Tom Roundtree was killed for? A. I understood he made threats, and he belonged to some kind of League.

Q. What were the threats? A. I did not hear very much of the threats, but they said he belonged to some kind of League, and that he said they ought to kill from the cradle up.

Q. You don't yourself know anything about it, do you? A. No, sir; I know I was very much scared, and the only way was to get away and hide.

Q. When did you begin to hide out? A. I was hiding out and watching all along that time.

Q. Did you begin to hide out after the election? A. Night after these men were killed.

Q. Did the rest of the colored people hide out? A. I do not know, but from what they told me some of the women and children went to the house of Mr. Small, but most of the men lay out.

Q. Did most of the colored people take their blankets out in the field to hide? A. Yes, sir; that is what they told me they did.

Q. By Mr. Melton. Q. Did Captain Mitchell know what your politics were? A. Yes, sir; he saw me vote.

Q. Did Dr. Tom Whitesides know your politics? A. Yes, sir; he saw me vote.

The defense here rested their case.

*Testimony of Butler Askew.*—Butler Askew, witness for the prosecution, called in rebuttal, was duly sworn and testified as follows:

Q. By Mr. Corbin. Q. Where do you live? A. In York county.

Q. Do you know Maj. Guiton? A. Yes, sir.

Q. Did he tell you last Fall that the Ku Klux were going to raid on you? A. He did not.

Q. Did he ever give you any notice? A. No, sir.

Q. Did the Ku Klux raid on you? A. Yes, sir; they did.

Q. State the particulars? A. Five of them raided on me; they made me pull my shirt off, and whipped me.

Q. When was that? A. It was the third of February, Sunday night.

Q. Is that the only time? A. Yes, sir.

Q. Do you know what Major Guiton's politics are? A. He was a Democrat till the last time when he voted the Republican ticket, and he said he was sorry he ever did it.

Q. When did he tell you? A. Since this Ku Kluxing started—since Christmas.

Q. How long after Christmas? A. It was about a month after Christmas.

Q. Did you vote? A. No, sir; I am not old enough.



Q By Mr. Multon. I understand you to say that was after the raiding commenced that he said was sorry that he voted the Republican ticket? Yes, sir.

Question by Mr. Corbin. Was there any raiding done in that county before you were whipped? A Yes, sir.

Q Do you know who was raided on? A Charles Jacob, Pres. Holmes, Howell, and Charley Good.

Q How long were they whipped before you? A About three weeks.

Q Are you certain about the time? A No, sir.

#### TESTIMONY OF JACK DOWTON

Jack Dowton, a witness for the prosecution, called in rebuttal, being duly sworn testified as follows:

Q Where do you live? A With Madison Smarr York county.

Q How long have you lived there? A I been here four years.

Q Did he tell you any time last winter, that you had better look out, that the Ku Klux were coming after you? A If he told me that, I did not hear it—he never told me.

Q Did the Ku Klux come on you? A Yes, sir.

Q When? A About a month after Christmas.

Q Tell us about what time it was, and what they did to you? A They came there to my house, at my dog and wounded him, and came and led me if I belonged to the League; I told them did; they asked me if I belonged to Bill Kell's league; I told them I did; they asked me what I did for; I told them because I thought it was all right.

Q What did they do to you? A They took me and whipped me.

Q Did they whip you severely? A They gave me about one hundred licks; they didn't pull off my shirt.

Q Did you know any of them? A I did not know any of them—they had their uniforms on.

Q What was the uniform? A Red horns—horns about two feet long—some stood straight up and some hung down.

Q What did they tell you when they had done whipping you? A They asked me if I was going back to the League any more; I told them I was not; they asked me if I was a Radical, and I told them I was; they told me if there was a chicken-pox or anything burned, they would kill all you damned rascals.

Q Did you vote at the last election? A Yes, sir; voted the Radical ticket.

Q Were there any more raids on that place? A Butler Askew was whipped the same night I was. Charley Leach was whipped a good while before I was.

No cross-examination.

#### TESTIMONY OF CHARLES FOSTER.

Charles Foster, a witness for the prosecution, called in rebuttal, being duly sworn, testified as follows:

Q By Mr. Corbin. Will you state all the particular circumstances that occurred on the night that you and Dr. Whitesides, as you have testified, went on that raid previously to your going to the place of meeting? A On the evening before I was sent for by Milton Watson to come up to his house and bring my disguise—they wanted to make their disguises by the same pattern; and Miss Rose Jacob, and Miss Jerusha Moss, and Miss Mary Watson, assisted in making the disguises. As there was no saddle for Dr. Whitesides to ride, he asked me to go and borrow a saddle. I said certainly I

would, and I went and got one. He followed and met me on the top of the hill between where we lived and Samuel Smalls. I met them there. They were not disguised at that time. We put the saddle on Dr. Whitesides' mare and went on then to the ferry. Dr. Whitesides said to me, "Why didn't you bring some whisky?" Said I, that is your business. Said I, I have a little. We went over the ferry and on to the road.

Q Can you fix the time with any certainty, when that was? A I am not positive about the date, but it certainly can be identified, by looking over some dates that were done in the country. As well as I can recollect, I think the moon rose about eight or nine o'clock.

Q Have you had any conversation with Dr. Whitesides here in Columbia, since you came down? A Yes, sir.

Q State what it was? A He met me at the corner grocery, rode by and asked me to take a drink of whisky; I did so, and went back into the room—into a private box, and afterwards we retired into the back yard; he asked me if I was going to come right square out; I said wait till I go on the stand, and hear what I say.

Q When did that occur? A Some time the week before last.

Q Has he approached you since that time? A Nothing more than speaking to me; he has sent a friend of mine to me.

Testimony objected to.

Q Who came to you? A Mr. Lawson B. Davis.

Q Was anything said to you about twenty-five dollars? A Nothing more than what I have stated; Mr. Billy Wilson can tell you the result of that.

Q Do you know Julius Howe? A Yes, sir.

Q Is he a Ku Klux or not? A Whether he has been sworn in I do not know; I saw him on a raid leading a Klan.

Q He would not be leading a Klan of Ku Klux if he had not been sworn in would he? A I don't suppose he would.

Q About what time was that? A About the twenty-ninth of January or the first of February; it was the second raid that I was on.

Q Did you have any private talk with Captain Mitchell? A Wilkinson and Dr. Whitesides sent for me, the day I was put in prison to come to the third floor, they were in the Doctor's room; some twelve or fourteen of them when I went up; Sergeant Corbin said to me that several of the boys wanted to see me, and some one asked what I had said to Major Merrill; and I said I had told all I knew about it.

Q Who was that? A I don't know but I think it was Captain Mitchell.

Q What did he say? A He said if you had staid here I had stood some chance but, as it is, you have stuck me in for five or six years.

Q Do you know anything about the raid made on Capt. Mitchell by the Ku Klux? A I know but little; some of the members of Parker's Klan were said to have done it; there was said to be a man by the name of Williams, they were thought to be spies and detectives of the Ku Klux, and during this time, John Roberts, a member of Parkers Klan, was ordered to meet "Milton Watson" and myself—and we went to Mt. Vernon Church; the members of the Klan were partly disguised, and went in pursuit of these men, but they failed. I staid all night at Smith's place with Milton; Watson and the balance of them staid at the grocery; their disguises were left with me; the parties had their disguises on when they came up.

Q. What do you know in reference to their search-

ing for Williams at the house of Capt. Mitchell; I heard afterwards from Edward Leach; he is a member of the Klan; he said they had found the man, Williams, at Mitchell's house; they had found his papers, and they had searched him thoroughly and found him all right.

Q. Did they go in disguise for him? A. I think they did.

When was this? A. It was last Winter. I want to state about those disguises left with me at grocery. They were left there until the night after this, and I had taken the disguises and rode to Milton Watson's, and then I took them to Capt. Mitchell's house and then to him in person.

Q. At the time you were released from jail at Yorkville, who did you go home with? A. Wm Wilson and Thomas Bolam—I rode in the wagon and William Bolen drove the wagon.

Q. Tell us whether you told anything in the jail there at Yorkville, while you were there, that you were mistaken about Dr. Whitesides being on the raid. A. There might have been some talk; I drank a good deal of whisky while in Yorkville, and I might have said some such thing. When I made up my mind to confess, I made up my mind to tell the truth and nothing but the truth.

Q. Did you tell Dr. Whitesides, when you left the jail, that you would go up to Major Merrell's, and make some statement to him? A. I told Dr. Whitesides that I was going to Major Merrell's headquarters, but I did not remember saying anything else; my brother was with me, and he can tell, I reckon, what was said.

No cross-examination.

#### TESTIMONY OF WM. WILSON.

I reside in York county; I lived there all my life; I know Charles William Foster; I rode home with him from Yorkville when he was released from jail; he rode in my wagon; Tom Bolen was along and drove the wagon.

Conversation between the parties was objected to, and the objection was sustained.

#### TESTIMONY OF T. L. GUNN IN REBUTTAL.

I was present at rendezvous when they went on the Bill Kell raid, and saw Captain J. W. Mitchell there, and Charley Howe. I remember a remark of Capt. Mitchell—I have a bag of cotton. I thought they were disguises. He said he was going to the grocery for whisky, or something of that kind. The sack would have held about twenty-five pounds of cotton. After the raid I saw him put disguises in that bag. After the raid had been given up, and we turned to go home, it was then that I saw him put the disguise in the bag. The Bill Kell raid was, I think, some time in January.

#### TESTIMONY OF AMOS HOWELL IN REBUTTAL.

I live at Mr. Sam. Howell's, in York county, and have lived there all my life. I shall be twenty years old to-morrow, and have never voted. The Ku Klux made a raid on me last winter and whipped me. It was either the 25th, 26th, or 27th of January. It was the same night that Chas. Leach, Press. Holmes, Chas. Goode, and Jerry Thompson were whipped. They also whipped Wiley Edwards. I saw all these men the next day. They whipped me very bad. They came to my house and tried to knock the door down. I jumped up and opened it as soon as I could. One stepped up and held a double-barrel shot gun at me, and then another put up his gun at me and said, "God damn you; I believe I'll shoot you." Then they took me and whipped me, and gave me about fifty lashes.

#### TESTIMONY OF ELIAS RAMSAY IN REBUTTAL.

I know Robert Riggane; he was elected chief of

a Ku Klux Klan, he was on one raid when I was with him; he was elected chief at Sharon Church on the first or second week in May last; they made a raid at McConnellsville, when Jim Williams was hung; Robert Riggane was on that raid and was disguised; I first met him about two miles from where I lived, on the side of the road; I am well acquainted with him and live only about a quarter of a mile from him; I know John Miller, saw him at Sharon Church, at the meeting of the Klan; when they met to organize the Ku Klux Klan.

#### TESTIMONY OF JOHN ROBERTSON IN REBUTTAL.

I live in Chester county now, last winter I lived in York, on Mr. Billy Wilson's place; I left Mr. Wilson's on the fifth of March and went to Chester; I saw Dr. Whitesides at Chester about three weeks ago; he told me he was mighty glad to see me, he talked to me and Gyles Good another colored man, and he said to me "if we damned niggers didn't get him out, he was gone up;" he was then on his way here and was under a guard of soldiers.

#### TESTIMONY OF MRS. WILLIAM WILSON IN REBUTTAL.

I am the wife of William Wilson, and reside in York county. The first raid that was made on our place was on Jim Crosby, on the 20th of January, as well as I recollect. Jim Crosby was whipped, and some guns were broken belonging to him and John Robertson. The next raid was on the 3d of February. Our dog was killed; the house was surrounded, and they took my husband out, and they shot under the house. I am able to fix that day because my baby was born in the evening, at four o'clock, and they raided on me that night. There was another raid just three weeks from that time and the same night Mary Thompson was whipped, for they told me next morning that she had been whipped. Next they came to our house, when they said they were hunting for John Robertson, Mary's husband; and they raided on us again about a week after that time. They took Jim Crosby out of his house, a piece off, and made some threats. Jim Crosby himself told me next morning.

The prosecution here announced that they rested the case.

Mr. Corbin said that with the permission of the Court, he would not occupy their time with any opening argument. The counsel representing the defendants might open the argument and Mr. Chamberlain would close.

#### ARGUMENT OF MR. W. B. WILSON.

Mr. W. B. Wilson, counsel for the accused, Thos. B. Whitesides, said:

May it please the court and gentlemen of the jury: The client which I represent in this case, Dr. Thomas B. Whitesides, asserts his innocence, and respectfully, but with confidence submits to an intelligent court, to the frankness of an able counsel, who represent the Government, and to your sense of justice and right as jurors, that he should have a verdict of acquittal.

We are not here to defend or excuse crimes that shock and disgrace humanity. I have listened with amazement and with disgust, to the tale of horror that has been narrated to the Court. My client, Dr. Whitesides, utterly denies that he was a member of that Ku Klux organization. He denies that he ever participated in any of its outrages or its acts of violence. I am sure, gentlemen of the jury, that you will remember that the evidence comes from prominent witnesses on the part of the government, but that he denounced it as the most damnable thing that ever existed in any country. This denunciation was made; when? Not in the

day of its panic and disaster, when the angry power of the Federal Government burst upon it like a thunderbolt from a clear sky, but on the first of March, '71, when it was in the first blush of its strength and terror; when it required a man of nerve to face it; and it was then that Dr. Whitesides denounced it. To whom? To its sworn and active members. The Government witnesses tell you that, and upon that we stand.

In the defense of Dr. Whitesides, it is not necessary for me to discuss the legal questions in the case. I submit and trust his case upon the issue of fact.

I deny his guilt, and I ask you, gentlemen of the jury, in patience to listen to a synopsis of the testimony offered on the part of the Government and on the part of the defense, and then decide as to the guilt or innocence of this prisoner.

Mr. Wilson then presented to the jury a synopsis of the testimony of Wilson Davis, who showed a perfect familiarity with the names of those belonging to the Ku Klux organization in the vicinity where Dr. Whitesides resides, and he states he never saw Dr. Whitesides in a Ku Klux Klan.

The most important witness of the Government, perhaps, Mr. Gunn, as late as March, 1871, gave Dr. Whitesides the Ku Klux sign, but he was unable to respond to them. Mr. Gunn then commenced talking with my client and he denounced it as the most damnable thing that ever existed in any country.

The next witness rushes to the witness stand to rescue himself from prosecution, Chas. W. Foster. He admits that he has been in the very depths of this abyss of crime and outrage upon those unfortunate and often innocent persons who were lashed and tortured. He comes here a swift witness against a man he is disposed, for some unknown reason, to hunt down; but gentlemen of the jury, that God who has perfect cognizance of the true facts of the case has completely crushed the testimony that he gave against Dr. Whitesides.

Mr. Wilson here detailed the evidence of the various witnesses who testified that on the night of January 9th, 1871, when Foster swore he was with the raiding party that whipped Charles Leach, Dr. Whitesides was attending the sick bed of old Mrs. Mitchell, in company with Dr. Darwin and Capt. Mitchell, where he spent the entire night with Mrs. Mitchell and breakfasted at the house in the morning before he left.

These facts, the counsel contended, were all corroborated by the testimony of Dr. Darwin, Mrs. Howe, Miss Howe, Mrs. Mitchell, Saml Mitchell and Mrs. Whisonant.

Foster testified that Dr. Whitesides was on the raid on Charles Leach, and that he was on no other. Foster saw, on that raid, a man he took for Dr. Whitesides; that all the party, excepting three (not including Dr. Whitesides), were disguised with masks and gowns. Foster did not ride near Dr. Whitesides, who rode, he says, in front, while he, Foster rode in the rear. Foster did not recollect that the moon was shining, and he admits he did not speak with Dr. Whitesides.

On Foster's recall this morning he says that he spoke with Dr. Whitesides while on the raid, and asked him why he did not bring some whisky—none of which did he testify to on his direct examination. The only possible presumption is that Foster was mistaken in the disguised Ku Klux with whom he says he spoke; for it could not possibly have been Dr. Whitesides, unless every one of the various witnesses who saw him at Mrs. Mitchell's on the night of the 9th January, 1871, had perjured their souls by false testimony.

Again, Foster is shown by other witnesses to have said in jail that he was mistaken in saying that Dr. Whitesides was on that raid, and witness swore that he said he would go to Major Merrill and rectify the mistake; that they heard him also—after he got out of jail, and was going to Col. Merrill's in reply to Whitesides request not to neglect to fix that matter—say, I will go right straight now to Col. Merrill's and correct the mistake, when Foster in his testimony stated that he said to Whitesides, "I am going to Maj. Merrill's." I asked him the question, "did you not say that you were going to correct the mistake?" his reply was "I don't recollect." Gentlemen, we have put up witnesses who do recollect. Now it is claimed that one of those witnesses was a Ku Klux. What was Mr. Foster but a Ku Klux. If that is to discredit Riggins the same objection will apply to Foster. But we put up other witnesses who tell you that they were not Ku Klux.

Well, now, here is the admission of Mr. Foster himself, that he was mistaken; that he is satisfied that Dr. Whitesides was not on that raid.

You have, gentlemen of the jury, the strong probability that Foster was mistaken in supposing that Dr. Whitesides was on that raid that night. You have Mr. Foster's positive admission that he was mistaken, and that he would go and correct the mistake; and then to crown all, to dissipate all doubt upon your minds, you have the positive testimony of Dr. Darwin, Mrs. Howe, Mrs. Whisonant, Miss Howe and Charles Mitchell, proving that he could not have been there, because he was somewhere else. I think that disposes of Foster.

The next witness was Mary-Thompson. She does not speak of this raid of the 9th of January, 1871, and she does not specify any particular date. She says she saw two men with masks and gowns on, and one of the men was Dr. Thomas Whitesides. She was undoubtedly in a state of alarm and terror, and doubtless she thought it was Dr. Whitesides, although his face was covered and it was in the night. How easy for her to be mistaken.

Jim Crosby also testified that it was Dr. Whitesides. Well, how does he know? "Why do you think it was Dr. Whitesides? Did you see him to recognize him?" "No; but I saw a track, and I thought it was Dr. Whitesides' track."

Now gentlemen did we offer nothing to rebut this testimony, I am sure you would receive it with hesitation; but there was a witness, Mr. Thomas Bolen, whose testimony was given in full at Yorkville to Colonel Merrill—he tells you the whole story—he goes upon that stand; he takes a solemn oath, that he was a Ku Kluxing; and that he was with that party; he names them all and he says that Dr. Whitesides was not there—here you have positive proof by a Ku Klux—a Government witness—whose confession the Government has taken, who tells you that Dr. Whitesides is innocent. Tom Bolen was a Ku Klux, he was familiar with the Klans of the country, he knew the names of their men—of their chiefs. Was Dr. Whitesides a chief? Did he belong to any Klan? No, sir; I never saw him; he was never on any raid. Why even Charles Foster admits that; he says he was never on any raid except on the ninth of March.

There was a witness who fixed the date, the 25th of January—a young man by the name of Amos Howell. He may have been whipped on that night, but that testimony, if it was offered to change the date to the 9th, certainly can amount to nothing. The testimony of every witness of the government proved conclusively that it was

the 9th, and whether Amos Howell was whipped on the 25th or not is wholly immaterial. The 9th was the date first fixed by the government witnesses; Charles Foster, and his testimony was taken down—swears that it was on the 9th of January, 1871, and it cannot now be altered to the 25th of January.

Gentlemen, I ask you that in the presence of your oath—your solemn oath—that oath which invokes the Almighty to witness that you shall honestly decide this case; in the presence of that solemn oath what other motive can a juror have in the discharge of his high functions, but to be controlled by simple obedience to truth and duty. The United States Government cannot—do not ask that the innocent be convicted, or to inflict its penalties upon any but the guilty; and if in this time of high party excitement you can soar above the passions of the hour, and the prejudices of race, you will vindicate before the world, and in the noblest manner your claim, your fitness for all the privileges of the American citizen.

ARGUMENT OF C. D. MELTON, ESQ.

May it please the Court and Gentlemen of the jury: There are two leading points in this indictment. The one is a charge of general conspiracy with intent to violate the first section of a designated Act of Congress, by unlawfully hindering, preventing and restraining divers male citizens of the United States, of African descent, from exercising the right and privilege of voting, and by other unlawful means in not allowing them to vote. That feature of the indictment charges no specific act against any person. The court has ruled and will so instruct you that the mere fact proved that any man is a member of an organization, having such objects is sufficient to warrant your conviction of him on the first count. The other feature which covers the three additional counts in the indictment are the features which charge a special conspiracy against an individual member of the community named Charles Leach. So that your duty in the investigation of this case is first to determine as to these defendants, and particularly as to Capt. John W. Mitchell, whom I represent, whether he was a member of any combination, the purpose of which was to interfere with the right of African citizens to vote.

In the face of the testimony offered here I cannot stand before you and say that John W. Mitchell has not been a member of the Ku Klux organization. It is stated by Foster that he was present when he was admitted into the order; and that testimony stands uncontroverted. It is stated by Foster that he recognized him on a certain raid. The raid here charged is that upon Chas. Leach, and it is stated by the witness, Gunn, that he was with that Klan or some Klan, at Barclay's Hill, and by another witness, that he saw him at that meeting.

In the face of these facts, which we have not been able to controvert, I cannot ask that you should listen to me in submitting any argument or denial that he was a member of this organization.

But, gentlemen, he makes, by his plea of not guilty, a denial that that organization was ever designed or intended to interfere with African citizens as a class, and to prevent them from exercising the right of citizens to vote, to bear arms, and to discharge all other duties pertaining to citizens. That is what the Government has to prove; and whilst I am compelled to admit that my client belonged to that Order, I have a right to ask you, gentlemen, that you shall require of the Government proof that that Order had the objects charged in this indictment. How do they propose to prove it? Do they

prove it by the Constitution of the Order? It does not appear there; on the contrary, that Constitution sets forth the purpose of the Order to be of a different character altogether. It abjures the application of force, and it does not seek to resort to any unlawful means, or designs, or purposes, in carrying out the objects of the Order. Was it political? Perhaps it was. But was not the League political? It does not follow because an association is secret in its purposes, secret in its meetings, that it is therefore necessarily obnoxious to law. You must look at the organization, at the constitution of the Order, to find what its purpose is; and I say, gentlemen, you do not find there that it had any such purpose.

But what does the Government do in the next step? They undertake to show you by the admissions of members of the order, that they understood that such were its purposes. Very well, if those members understood it they were guilty of a violation of the law in having become associated with it; but does that agreement bind him who did not understand it?

Now, gentlemen, if it appeared in the constitution of the order that such was its purpose, every man who joined the order knew its purposes; but it rests alone in my conscience to know what I understood to be its object, then that alone affects me, and does not affect you who did not so understand it.

Has the Government proved to you that John W. Mitchell regarded this combination as one which had for its purpose the interfering with the right of African citizens to vote; how then can it charge J. W. Mitchell, even under the first count in this indictment, of having been a member of this organization which had that for its object? Why gentlemen, where is the thing to stop? They will not confine it alone to interfering with the right to vote, but with interfering with all other rights; not only interfering with citizens of African descent, but of every other citizen; and not only citizens entitled to vote, but those not entitled to vote.

I say it is an unfair mode of ascertaining the purpose of this organization.

What then is the next mode? By acts which members of the organization committed; and the great body of testimony which the prosecution has here offered has been directed to developing the manner and enormity of the outrages which individual members of the organization committed. But does that charge those outrages as being committed for the purpose of the organization?

I suppose many of you are members of the Union League, which is a somewhat similar organization, and a political organization, but I am not prepared to say an improper organization. But I ask you if it should be charged upon ten, fifteen or twenty members of the League, that they had gone out in the community and committed violence, blood-shed and incendiarism, would you feel that it was false to charge that it was the purpose of your League that blood should be shed, that houses should be set on fire? You would know that that was not the purpose of the League, and that the League had no such design, even although you may have known of such instances. Perhaps members of your League have gone to those of your color, and have said you shall not vote the Democratic ticket. I have heard of instances of that kind, and I doubt not that you have heard of them. But who is responsible for things of that kind? An individual member may have committed such an act, but was it a feature of your League? Was it any purpose of your League?

Why then charge upon the whole organization those acts which a few misguided, vile miscreants undertook to perpetrate? Was ravishing helpless women a part of this conspiracy? And yet you have been made to believe so, if you are to be guided by testimony of that kind. We have had here from women, details of the most disgusting character put forward for the purpose of showing from this act that ravishing women was one of the purposes of this organization.

Now, I ask you, do you believe it, and that there did exist upon the face of God's earth an organization which would have among its purposes that of committing these gross outrages upon helpless women?

What then is the meaning of these outrages? They mean no more than that this unfortunate organization—I say unfortunate, because it was unfortunate in its conception; it was unfortunate in its mode of undertaking to carry forward what were its legitimate purposes in undertaking to carry them forward by disguises and false words, which would afford reckless men opportunities for mischief—it means, gentlemen, nothing more than that in that order there were found men who were vile and low, and who, under the protection of the gown and the mask, undertook to carry out their own purpose of lust and their own private vengeance.

Now, gentlemen, if John Mitchell was connected with any outrages of this character, or if the prosecution has carried home to him under the first count, a knowledge of such acts as within the purposes of his conspiracy, you may convict him if you choose so to do; but I say to you, gentlemen, that unless you are satisfied that these outrages upon the rights of the colored people—or of the radical party if you choose so to consider it—was a part of the Constitution of the order, you have no right to say that John Mitchell is proved to have entertained any such purpose as that, unless you show that he himself was at some of the outrages; men may organize for any purpose. The order of Masons, and Odd Fellows, to say nothing of the League of which I have already spoken, are organizations existing all over the country. From those organizations every day come forth men who depart from the Order. Why, gentlemen, the world is now almost convulsed by the mischievous results of such an organization—an organization designed, no doubt, for beneficial purposes—an organization of the working men of the country, which exists in France, in Germany, and all the nations of Europe, and which to-day is existing in this country—an organization which finds as a champion one whom you of the colored race have reason to regard as the man who, above all others, has devoted his life to your interests—I speak of Wendell Phillips;—and yet that society whose purposes he is endeavoring to impress upon the people of the country—that very organization is one upon whose members has been charged the outrages which signalized the recent burning of Chicago, and which, in the city of Paris, consummated outrages which made the civilized world blush for shame. That same secret organization is now advocated by one, of whom, let people say what they will, they cannot deny to him honesty of heart and purity of purpose.

Now gentlemen, if you understand my argument before you convict my client under the first count, even admitting that he was a member of the order, you must be satisfied that the order of which he was a member had for its purpose the blinding, preventing and restraining of male citizens of the United States of African descent, who are qualified to vote, from exercising the right and privilege of

voting; and I say to you, gentlemen, that that purpose appears not in the constitution, and if it appears by the testimony of other members of the order, I say that there is no testimony that it was so understood by Mitchell, and if it is proved that members of the order have committed outrages of this foul character, unless you shall be satisfied under the subsequent counts in the indictment that Mitchell was so engaged, we have a right to claim at your hands that he shall be acquitted even under this first count.

I wish gentlemen that it could have been so that I could place Mitchell upon the stand himself. I feel, gentlemen, that in this investigation now going on in reference to these outrages, it would be to the interest of truth and justice if we could hear from the mouth of this defendant himself, what was his connection with this order. But such is not the law. The defendants who come into this court come with their mouths sealed; not a word are they allowed to utter to explain their conduct, their motives, or their purposes.

Gentlemen, I have no hesitation in saying that in that order are found some men of as pure and noble character as are found in the land. Why are they there? Because the foul miscreants who traversed the country, interfering with the laboring population, forced the employers of the colored people to go into the ranks to secure their own laborers from these outrages. They have gone into the order for the purpose of using their influence to prevent the consummation of these outrages, and to endeavor to control those who were running rough shod over the best interests of the country. I would have been glad, gentlemen, if I could have placed the defendant on the stand. Perhaps he could have told you why he was at Barclay's Hall; perhaps he could have told you why it was that that raid which was attempted on that night, was prevented; who it was that prevented it; and perhaps he could have told you of other raids where he was when mischief was prevented; where the whole party was induced to desist from their purpose and to go home; cannot such a thing be? Yet, I do not complain of the law—I am always content with the law as it is. But gentlemen, my client is without the opportunity of saying anything in his own behalf. What was his understanding of the purposes of the organization; what was its purposes and what the extent of his connection with its operations, you cannot know, for he is not permitted to tell you. When his month is thus closed you should ask at least of the Government that they should fasten upon him beyond reasonable doubt, the acts of criminality, which would authorize you to find him guilty. This is not the only case in which he is indicted. It is in testimony here that he has been spoken of as the Chief of his Klan, and you have heard indictment after indictment read in which his name appears. If then, gentlemen, he has been guilty of any of these outrages with which he is charged, you may be well assured that he will be in some one or other of them reached.

I now ask your attention, gentlemen, to the fact that he is charged with having been a participant in this raid upon Charles Leach. Do we find anything in the testimony of Charles Foster which connects John Mitchell with whipping Charles Leach. He did not recognize Mitchell at Howell's Ferry; he only says that others in the crowd spoke of Mitchell. Is that sufficient testimony to warrant you in finding a verdict of guilty against him? I think I am not mistaken when I state to you that that testimony of Foster, unsatisfactory as it is, is

the only particle of testimony in the whole case to show that John W. Mitchell was on that raid.

On the other hand what do we show you? What was the date which the witnesses for the prosecution fixed at the outset? The very day which we knew to be the day when Charles Leach was whipped. You recollect well that Foster fixed it on the 9th of January. Our own witnesses fixed it on the same night; and on that night John W. Mitchell was at home with his sick mother, and sat up with her all night.

Gentlemen, it will be asking too much of you by the prosecution to assume for one moment that we have failed to connect on testimony of an *alibi* with the correct date of this outrage upon Charles Leach.

If you believe our testimony, John W. Mitchell is not guilty of having been present at this raid. I trust he may be as successful in establishing his innocence of any other of the several charges which have been brought against him. I would be sorry to believe that one who has lived as long as he has, and who has sustained the character that he has, should forfeit it by being shown to have lent any sort of aid and countenance to the perpetration of such outrages upon these people who are comparatively helpless and ignorant—who are dependant upon the kind offices of those who are more favored than they have been, and who have heretofore received kind offices of him who here to-day sustains a character of uniform kindness towards them. I shall be sorry if he fails to sustain his innocence in connection with every other charge brought against him.

I feel well assured, gentlemen, that under the sanction of your oaths you can honestly say that he is not guilty of this outrage. Having said this much I leave his case in your hands.

## TWENTIETH DAY'S PROCEEDINGS, DECEMBER 22.

The Court met pursuant to adjournment.  
Hon. Hugh L. Bond, presiding. Hon. G. S. Bryan, Associate.

ARGUMENT OF ATTORNEY GENERAL D. H. CHAMBERLAIN.

May it please the Court and gentlemen of the jury: We are now approaching the conclusion of another long trial, I cannot forget that this trial is similar in many of its features, to another which has recently been presented to this court, and to another jury; but I ought to remember in presenting this case to you to-day, that it is a new case, and that I am not to assume that any part of this case, or any features of this conspiracy about which this discussion is about to be had, are known to you. I am not to suppose, gentlemen of the jury, that you, sitting here upon this pannel, have any knowledge of this case, or of this conspiracy, except what the government and the defense, have presented to you, during the progress of this trial.

I don't forget that there are some faces before me, that were before me in the former case, but yet, this trial concerns new defendants, it rests entirely upon new evidence, and it is necessary for you and me to remember that we are to try this as an entirely new case, and it devolves upon me, a labor which I could wish to avoid, that, of again presenting to you fully and completely, so far as I am able, the

features of this conspiracy, its intentions, its purpose, its methods, and its operations, and then to see what connection these two defendants have with this conspiracy.

I have, gentlemen, the same feelings in commencing this trial which I had in the former case. These prisoners have been well defended—defended by as much ability and as much eloquence as the profession of South Carolina can boast. Whatever there is of law or of evidence which tends to show that these two defendants were not connected with this conspiracy has been presented to you; and it is a pleasure for me to say, with the greatest respect both for the ability, the ingenuity and the eloquence with which my friends, the counsel for the defense, have presented the case to you. I can have no feeling, therefore, that I shall unduly urge upon you in this case on behalf of the Government; I have not the ability, I fear, to equal their eloquence or ingenuity in the prosecution of the case in behalf of the Government.

But, gentlemen, there is another feature which draws a broad line between this and the former case. These two men who are before you to-day are nobody's dupes. They are not thoughtless, uneducated, ignorant and inexperienced young men. They cannot plead any exemption from the full responsibility of what they have done, and what they intended on the ground. That they occupied an humble position in society, and that when they found that community swept by the terrible tornado of this conspiracy, they were driven into it against their judgment and their principles. Those men, gentlemen of the jury, Dr. Whitesides and Capt. J. W. Mitchell, are men of standing and men of principle, and men of education; men who have been accustomed to lead and influence the community of which they formed a part. It is not necessary for me to say to you that the United States does not seek to convict these men, unless the evidence and the law point to their guilt. The government does not ask for vengeance or for blood; but when we do meet a case like this, of gentlemen concerned in a conspiracy with intent to deprive whole classes of the community of their rights, and find they are men of repute and men of influence, the government says, and the conscience of every man says that, then if ever the full measure of justice, the full responsibility for acts done and purposes planned, is to be visited upon such defendants; and therefore it is I have another feeling which I did not experience in the last trial, not only that I ought injustice to this cause, but that I can feel honestly that every particle of evidence and every principle of law should be pressed to its full and just conclusions as against these defendants, defended, as they are, by learning and eloquence; the defendants, reputable citizens, in high social standing in the community. If you do find that the evidence points to the guilt of the defendants upon this indictment, then, if you are not swift to find your verdict, you will at least be unhesitating in following the line of the evidence and the law.

No, gentlemen of the jury, these defendants are arraigned upon an indictment containing four counts. The first count charges them with a general conspiracy, not a conspiracy directed against Charles Leach, or any other particular individual, but charges that they were engaged in a general conspiracy to deprive the colored citizens of York county of their right to vote. The second, the third, and the fourth count charge them with a special conspiracy. The second count charges them with a conspiracy to injure Charles Leach, because he voted in 1870. The third count charges

them with a conspiracy to prevent him from voting in 1872; and the fourth count charges them with a similar conspiracy to injure and oppress him because he voted for a particular individual, A. S. Wallace, as member of Congress. You see, therefore, gentlemen, that the first count alone what I may call this Ku Klux conspiracy, and the second, third and fourth charge of general conspiracy, to injure and oppress a single individual named Charles Leach, it is my duty gentlemen, to draw your attention to the connection of these defendants to the first count; and what I propose to show to you in the first place is that this was a conspiracy in York county which called itself the Ku Klux Klan, the object of which was to deprive colored citizens of that county of their right to vote; in the second place, that they carried out that conspiracy and did attempt, in all their operations and by numerous raids, to carry out the purpose of that conspiracy; and then, in the third place, these two defendants were members of that conspiracy and responsible for its operations and its acts. Now, gentlemen of the jury, there is another point in law which you must carry in your minds through this discussion, and that is, that when a number of individuals have banded together for the accomplishment of a common purpose, the law treats them as one man. If you twelve men who sit before me join together to accomplish an unlawful purpose, the law looks upon you as one man, and the meaning of the word conspiracy is "a breathing together," you speak one voice, you wield one arm, you are a single man while engaged in that conspiracy; and therefore what any one of you says or does, while in pursuance of that conspiracy, is the act and declaration of you; it is not therefore, Mr. Foreman, necessary that we should prove that you did the act which we charge upon the conspiracy; it is not necessary for us to prove that you, Mr. Jurymen, were the party who made the declaration; but of the last man that sits upon the panel while in pursuance of that conspiracy, has uttered a word or done an act connected with that conspiracy, it is the act of every one of you 12; if gentlemen we succeed in showing that Dr. Whitesides and Captain John W. Mitchell were members of that conspiracy it is unnecessary for us to prove, to show, under this first count, that they went upon a raid; that they ever lifted a lash or struck a blow; if they are members of that conspiracy, what ever raid any member rode upon, there rode Dr. Whitesides and Captain Mitchell, and upon every negroes back that they struck their blow, no matter what their names, if they were conspirators, and members of this Klan, those blows were struck by Dr. Whitesides and Captain Mitchell.

Now gentlemen, if we can show that such a conspiracy existed, and that these defendants proposed to deprive colored citizens of their right to vote, and that Dr. Whitesides and Captain Mitchell were members of that Klan, then they are guilty under this first count.

Your Honors, speaking the voice of this Court, have already given us the law, which is the common law of conspiracy, about which there can be no dispute, and in order to ask your verdict on this first count it is not necessary to prove that Dr. Whitesides or Capt. Mitchell ever went on any raid, although we shall prove it. It is not necessary to show that they were perfectly cognizant that Charles Leach was ever whipped, or that any colored man in York county was ever whipped. If they joined the conspiracy which had that for its object, they are responsible for the acts which carried into effect the purposes of that conspiracy.

No, gentlemen. I am not pressing the law in or-

der to envelop these defendants, but I am stating to you the law precisely as it has been already delivered to you by the Court, and as it will be delivered to you before you are charged with this case.

The Court, in the case of the United States vs. Robert Hays Mitchell, instructed you, that the act of one was the act of all; it is not necessary to show that Charles Leach, Charles Good and others, were whipped, because they were Radicals, they may have had private grudges, which they went there to gratify; they may have chosen to whip these men because they were members of the militia company, it is not necessary to show that to prevent them from voting was the only effort of this conspiracy; if we show to you it was one of their objects, it is enough, so that gentleman of the jury I want you to understand just how much is to sustain this first count that we shall show, and that it is simply this. That the Ku Klux organization was a conspiracy to deprive persons of color of their right to vote, and that this was understood to be its object, and that Dr. Whitesides and Capt. Mitchell were members of that order, and while we shall show to you, gentlemen, that they were not only members of the order, but that they participated in its acts, and were present at its meetings, but it is not necessary for us to show more, than simply to show that they were members of this Klan.

Now, gentlemen of the jury, what evidence have we of this conspiracy; we have in the first place, the evidence of its written argument, I know gentlemen that many of you are aware from a former case, that has been presented here, what I am about to say, but I beg that you will listen to me, because you are charged with this case alone, and I must present it to you as if it were a totally new case.

This paper purports to be the Constitution and By-Laws of the Ku Klux Klan, of York county, South Carolina. It is recognized by its oath by Mr. Davis, by Mr. Gunthorp, by Mr. Gunn and by Mr. Foster. Its oath is recognized by each of these four witnesses as the oath which was administered to them when they were admitted to the Order. Now, gentlemen, what does the oath indicate as the purpose of this conspiracy? Let us look into it and see whether it has a lawful purpose, or whether it intends to accomplish its purposes by unlawful means.

The oath binds each member of the Order to this, that he is on the side of justice, humanity and constitutional liberty, as bequeathed to us in its purity by our forefathers; or, as Mr. Davis tells you, in the oath he took, the oath bound him to be on the side of justice, humanity, and to oppose the 13th, 14th and 15th Amendments of the Constitution of the United States. Let us see what this points to—"Constitutional liberty as bequeathed to us by our forefathers." This sounds like an innocent phrase. It is the introductory sentence to the oath of this Order. What does it mean? It means precisely what Mr. Davis found it to mean. It means the Constitution before it was amended by the 13th, 14th and 15th Amendments. "Constitutional liberty, as bequeathed to us in its purity by our forefathers," means slavery as it existed in the Constitution of the United States, and was protected, and not only protected by the municipal laws of South Carolina, but protected and enforced by the National law and Government in all its departments; and if some of you, gentlemen, had escaped in those days beyond the limits of South Carolina, even to the last foot of ground before you reached the



Dominions of the Queen of England, this national law, this constitutional liberty, as bequeathed to us in its purity by our forefathers, would have seized you, and brought you back and planted you again upon the plantation, and within the reach of your former masters; constitutional liberty, as bequeathed to us in its purity by our forefathers, means opposition to the thirteenth, fourteenth, and fifteenth amendments. The fifteenth amendment abolished slavery, the fourteenth amendment secured the equal rights of all citizens of the United States against any discrimination or distinction on the parts of the Governments of the States, and the fifteenth amendment, which crowned the edifice of the United States, in the right to vote against any discrimination on account of race, color, or previous condition. This organization, then gentlemen, is directed against the thirteenth, fourteenth and fifteenth amendments to the Constitution. It is therefore, directed against the freedom of the African race, against their general equality before the law, and finally against their right to vote against any discrimination, on account of race, color or previous condition.

What is the second paragraph of this oath? "We oppose the principles of the Radical party." Now, gentlemen, it comes to be narrowed from general opposition to the new amendments to the constitution, down to opposition to the Radical party. If it had said we are opposed to bad government, we are in favor of the Union of the States, we oppose corruption and misuse from whatever party it comes, its purposes might have been so broadly and generally stated that you could not see that it was a political position, and directed against a specific party in the community. But and honest guise is worn, and after declaring itself on the side of constitutional liberty as bequeathed to us by our forefathers, it says we oppose and reject the principles of the Radical party. So far, therefore, gentlemen of the jury, we have reached an organization which is to oppose a political party which exists in this community. It is, therefore, an oath-bound organization, directed against a political party, after declaring its purpose to oppose the Radical party.

"If any member divulging or causing to be divulged, any secrets of the order, shall suffer death." Now, gentlemen, we begin to see that this is a serious business. It is not a political club to circulate information, to distribute documents and exercise its influence, freely and generally in the community, but they have secrets. They are going to perform deeds which must be concealed from the world, and not only must they be concealed by an ordinary oath, but it must be concealed and kept from the world by an oath, a part of whose obligation is, if he discloses any secrets, shall be put to death. Do you not know, gentlemen, does not the world know, that any organization formed in this country, whose secrets are so valuable to its members, so sacred and binding that he who discloses them shall be punished with death, is an illegal and unlawful organization.

Something has been said to you gentlemen about the Union League, did anybody ever pretend that that ever was an organization other than voluntary and existing under the shadow of law, was it ever pretended that it was an organization which deliberately put down in its constitution that those who divulged its secrets shall be put to death; does the League punish its members who leave its ranks and expose its secrets? Does it declare itself opposed to any political party? It does not, for most of you, I doubt not, as well as myself know that that organization excludes no man on account

of his politics or color, and demands no political faith for its membership, and harms no man if he joins it, if he reveals its secrets to its deadliest enemy; yet here is an organization which opposes the principles of the Radical party and punishes with death those who expose its secrets.

This organization, gentlemen, requires that every member of its organization shall provide himself with a pistol, with a Ku Klux gown, and a signal instrument. What purposes, gentlemen of the jury, are to be executed with a pistol, a Ku Klux gown, and a signal instrument; are they lawful purposes requiring a pistol and a disguise for the body, and the voice? I insult your intelligence and your common sense, gentlemen, if I stop to argue to you any longer that puts members to death for exposing its secrets and requires its members to go upon their deeds with a pistol and disguises for the body and the voice, is not an unlawful combination, is not a conspiracy, and most thorough sense of that term.

What next, gentlemen? "No person of color shall be admitted to this Order." Why not? Cannot persons of color be on the side of constitutional liberty; on the side of justice and humanity? May they not provide themselves with a pistol and a Ku Klux Klan gown and signal instrument? May they not be ready to take an oath and to put to death any fellow member for divulging their secrets? Certainly they may; and yet no person of color shall be a member of this organization. What then have we? We have an organization, bound together to defeat the three amendments to the Constitution of the United States, which declare freedom to the colored race, and protect him in his rights, disguised and sworn to put to death any of its members who divulges the secrets of the Order, and directed against the colored race, whatever may be their political principles, or other sympathies, excluding them on account of their color from the ranks of its membership, and all this, gentlemen, drawn out in detail. The election of its officers—its meetings now ordered, its trials of offending members, the sentence of death for disclosing its secrets, and the provision for an appeal, before the sentence of death is executed, to some power which is described as the Grand Cyclops, at Nashville, Tennessee, and all this gentlemen of the jury, written and set down, with pen upon paper, and brought here before you and recognized by every member of the order brought here and placed upon the stand.

Now, gentlemen of the jury, we come to the conclusion, to which every mind must come, that we have here upon this paper not only conspiracy, but a conspiracy that appeals every citizen of the country; before we go beyond this point; before we see the actual practice, we are startled with the terrible character of an organization which deliberately provides for the death of any man for whom shall disclose its secrets.

Then gentlemen what evidence have we that interprets this written agreement, you remember the evidence of Mr. Davis, that he was a member of the order; had attended its meetings and had met to go upon its raids; he tells you that its purpose was precisely what this paper indicates to you, and that was to put down Radicalism, by whipping all the colored members of the Radical party, and that this was its general and all pervading purpose, and while on special occasions they might add to it the purpose to punish some person, who was otherwise obnoxious, yet the general, and all pervading purpose of the organization, was the

putting down of Radicalism and negro suffrage. Mr. Davis is, perhaps, upon the whole, the best informed member of the Order which we have placed before you. He tells you distinctly that his understanding, when he joined the Order—and he was clerk of the Klan and recognized its Constitution and By-Laws—was the whipping of colored men, to injure and oppress them till they should be afraid to vote the Radical ticket.

Mr. Guntborpe tells us that as early as 1868, three years ago and more, he joined an Order in that county, and after he had entered it, he found that it was a political organization aimed against the negro Radicals, and he left it.

Mr. Foster, who went further than any of these witnesses, and joined in these raids that have been described to you, tells you in terms that have never been contradicted, that he never otherwise understood that Order than that its purpose was primarily and always and everywhere to interfere with the right of the colored of York county to vote and to exercise their free choice in their elections. They undertook, also, to subdue the few scattering white Radicals there; but their aim was so to terrorize that community until no colored man who had been set free by the 13th Amendment, and made a citizen and a voter by the 14th and 15th Amendments, should be any better, or, gentlemen, as well off as when he was a slave; for if Charles Good and Charles Roundtree had been the property of any man in York county, would he have suffered their throats to be cut? If you have not rights, you had better be property, for then man's cupidity at least would protect you in your life. Mr. Foster tells you that always and everywhere its purpose was to go upon these negroes who had influence and who had voted the Radical ticket.

Now, gentlemen, what other kind of evidence have we? We have the written agreement, and the testimony of these four witnesses as to how it was to be carried out; what next, gentlemen, Mr. Davis tells you that Charles Good was whipped by this order, and why? Wesley Smith told you that he was whipped because he was a radical and had influence among the negroes; and what became of Charles Good afterwards? he was so imprudent as to say he thought he knew some of the men who whipped him, and what happens? Carrying out its opposition to radicalism, they have whipped him, and the poor man tells that he thinks he knows some of the men who did it, and this conspiracy takes him upon the highway and ties him to a tree; half kills him by shooting him, and finishes him by smashing his head with a rock; members of the order go to Mr. Davis, a brother member, and tell him that they have done it; and one of them says I shot him, and another says I finished him before I left. Gentlemen of the jury only three or four men may have killed Charles Good, some of those who have not been engaged in this murder may shrink back and be startled into confession by the enormity of this crime, and therefore the order goes forth that every member of the order assemble, in the field, where the body of this negro lies, and let them carry him and conceal him in Broad river, and every man is connected with the murder, and if he gives evidence he gives it against himself; they meet, gentlemen of the jury, this Ku Klux Klan, they sink it in Broad river and one of them apparently with less remorse or more daring than the rest, jumps upon the body and drives through it the stakes that are to hold it to the bottom of that stream. That is the Ku Klux Klan, gentlemen, not upon paper, not by the voice of the witnesses, telling you about its order, but it is

the Klan speaking through the pistol, under its disguises and carrying out the full purposes for which it was formed. But this is not all, do you remember the witness, Mr. Bowens, who was one of the party that raided upon Tom Roundtree, and shot him as he was attempting to escape; and then went to him with a bowie-knife, while he was yet breathing, and cut his throat from ear to ear? And what is the matter with Tom Roundtree—was he a militia man. Had he fired any body's house, had he threatened to kill from the cradle to the grave? "That cradle to the grave, gentlemen, is a white man's story." We have heard enough of it, you know gentlemen it is not the vernacular of the negro; it is the white man's tale, told after the deed, but even this is not brought against Tom Roundtree; he is a man of substance, a reputable citizen of that community, and the only known offense which he has committed, is that against which this conspiracy is aimed—that he was an influential member of the Radical party.

Gentlemen, shall I go over these other instances of violence and atrocity? No, I cannot; it is enough that it has been repeated in this Court—and that it will go forth to the world in the public prints, let us not, if we can, avoid it or stain our lips, or fill our minds again with those horrible details, but wherever we find the Ku Klux Klan striking, they are striking against Radicalism, against negro Radicalism; and my eloquent friend asked yesterday, if, when they are ravishing women, and whipping women, if they are still pursuing Radicalism? I answer, yes, yes. When they whipped Mary Robertson it was to make her tell where her husband was; when they ravished Jane Simril, it was to punish her as well as to gratify their lusts and to punish her because she would not tell where her Radical husband was; because she would not disclose where her Radical husband was. Not an act, gentlemen, but what points, gentlemen, to this general purpose, wherever you see the Klan. Its general and constant purpose was the terrorizing of colored people by injuring them; by injuring their families until they shall have paid their penalty for their Radicalism, and which may deter them from voting at future elections. Now gentlemen, how much is established? That the Ku Klux Klan existed in York county; that it was an unlawful conspiracy to prevent colored men from voting; and now the serious question remains for these defendants—are they connected with that conspiracy? Remember, gentlemen, it is not necessary to prove that they killed Tom Roundtree; that they ravished Jane Simril; whipped Charles Leach, or killed Charles Good. Are they members of the Klan that had this for their purpose? If they are, they are responsible for all its acts.

Now, gentlemen of the jury, is John W. Mitchell a member of the Ku Klux Klan: it is admitted that he is. His counsel yesterday told you that with the evidence that had been presented, he could not argue that John W. Mitchell was not a member of the Klan, in York county. Charles W. Foster knows him, to be a member of the Klan; was present when he was elected chief of the Klan, in the old field near Mrs. Wright's house. He recognized him on the Presley Holmes raid, the same raid with which we shall soon connect him in whipping Charles Leach, but I need not refer to this testimony, because it is now admitted that John W. Mitchell was a member of the Ku Klux Klan; I have nothing under the first count therefore, to do with J. W. Mitchell, except to take the admission of his counsel, and the proof goes to show to you, that the

rature and purpose of the conspiracy was such, as I have described to you, and that J. W. Mitchell, as a member, is guilty, upon the first count of the indictment.

Is Dr. Whitesides a member of the Ku Klux Klan? We have no witness who saw him sworn in; we have no witness to whom he confessed in so many words that he was a member of the Klan, but let us see if he acted with the Klan as an active member, and engaged in at least three of its raids; we come to the testimony of Charles W. Foster, and he tells you that on the raid that whipped Charles Leach and others, he went with Dr. Whitesides to the house of Milton Watson, he details to you the circumstances.

Now, gentlemen, it is always very dangerous for a witness who is telling a false story to dwell on details; if the witness had said generally that Dr. Whitesides was a member of the order, he cannot well be contradicted, but if he tells you where he met him, who was with him, what he said, he can be easily contradicted. Foster tells you that he was at the house of Milton Watson; that there, with the women of that family they engaged in making their disguises for the Charles Leach raid; that while they were engaged, Dr. Whitesides having no saddle, he, Foster, was sent to a neighbor, whose name he gave, to get a saddle for him to ride with. Now, gentlemen, we have Milton Watson connected with that affair, and we have that neighbor who loaned the saddle. If I had been defending Dr. Whitesides I think I would have brought Milton Watson here. I think I would have gone to that neighbor—and asked this Court to wait, and this Court would have waited—to say whether he loaned a saddle on a certain night to Charles Foster. I think I would have gone into these details, and if my client could have shown that Milton Watson was somewhere else and that neighbor did not loan that saddle, I think I should have done a good deal towards impeaching the testimony of Foster; but nothing of that sort is done. Watson is beyond the reach of any of us; gone, we know not where, a terrified and self-convicted Ku Klux; and if he comes here to defend Dr. Whitesides, he comes to meet his own indictment and conviction. Mr. Foster goes on to tell us with the details how he met him with the saddle, where he met him, and of Dr. Whitesides taking the saddle and riding upon it, and details the conversation about the whisky, and where they went and who they met. Now, gentlemen, let us look at Charles Foster, as he comes here as a witness. Both of the counsel, yesterday, dwelt upon the fact that Foster was a confessed Ku Klux. So he is. They mention it to throw a suspicion upon his testimony. But how did Foster come into this Court to testify? Why did he originally come to make known the acts and purposes of this Order? If my friends can show that he was induced by any offer that he should not be prosecuted—that any inducement was held out to him to testify—then they will have done something to destroy his testimony. Have you heard a word of anything of the kind, gentlemen of the jury? He was like everybody else in York county who had belonged to that Order. He knew it was written down in the purpose of that Order that if he disclosed any of its secrets two thousand men in York county were sworn to kill him; there were promises of exemption from punishment offered him, and yet he comes to Col. Merrell and tells the whole truth, and comes knowing that the testimony he

shall give will convict him of felony, whose punishment is the penitentiary; and he came with the pistols—two thousand loaded pistols pointed at him, and every man sworn to kill him, and yet he comes and tells his story; he goes to jail, he comes out of it, he meets Dr. Whitesides; he meets members of the Klan everywhere; he is badgered in jail, he is coaxed and entreated everywhere; and still says firmly when I go upon the stand I shall tell the whole truth. Why Mr. Foster, one word from you will set Dr. Whitesides free; have you any animosity against Dr. Whitesides? none in the world. Why then will you not say the word that shall set him free? Because, gentlemen of the jury, it is not true; he was there, and when I come to tell the government about this conspiracy I determined to tell the truth. It has been told, and while I wish that Dr. Whitesides could have been left out upon that raid, I am on my oath, and against entreaty and against threats. I tell you, gentlemen of the jury, that Dr. Thomas B. Whitesides' testimony is the strongest possible testimony that can be brought before you. It is the confession of a self-convicted, self-accusing fellow conspirator, done without malice, done without any desire to injure others, but simply under the solemn conviction that this whole matter shall be fully stated under the sanction of his oath in this court.

Charles W. Foster's testimony comes here under sanctions, such as attach no other witness, because he comes here to brand himself as a felon—as a man who once was capable in some way or other of joining a conspiracy which he knew had these horrid purposes in its mind.

Mr. Foster, as I have told you, connects Dr. Whitesides distinctly with one entire raid, upon which no less than seven negroes were whipped—every one whipped because he was a Radical, or because he was a member of the Union League. Gentlemen, let me say to you, I am not forgetting the defense in this case; I am now simply going over the evidence which the government has presented; what, else, gentlemen, than the testimony of Foster, connecting him with what is known as the Charles Leach raid, which commenced with Presley Thompson, to Charles Leach, to Charles Good, to Amos Howell, Jerry Thompson and two others on the plantation known as the Beauty Spot. We have the testimony of James Crosby, a colored man, who was whipped because he was a Radical, who lived on Mr. Wm. Wilson's plantation. There had been four raids upon the Wilson Plantation; it was upon the first that James Crosby was whipped, it was upon the second, that Mr. Wilson was taken out of his house and threatened and injured, it was upon the third raid, that Mary Robertson was whipped, it was upon the fourth, that Mr. Wilson's house was surrounded and James Crosby was taken out and threatened with hanging, but finally let off. It was upon the first raid upon the Wilson place that they whipped Jas. Crosby. He was here and detailed all the circumstances of his whipping; and when the question was put to him: Did you know any of the party? he named to you four of the men who were engaged in this whipping. They were Capt. John W. Mitchell, Dr. Thomas B. Whitesides, George Leach and Ed. Leach. He says we knew them by their size and by their general appearance, by all the evidences that could come from a familiar acquaintance with men whom he had known for years. James Crosby is a preacher. He comes here

without anything to impeach his testimony; without any sort of evidence that he has any animosity against Dr. Whitesides. But he tells you positively that he knew Dr. Whitesides and Capt. Mitchell, and two others. The witness had no hesitancy in saying it was Dr. Whitesides and Capt. Mitchell. You remember, gentlemen, that in the third raid upon that plantation they whipped a colored woman whose husband is John Robertson. She tells us they came inside of her cabin; that there was a bright light there, and that while they stood there that she recognized their faces by the light of that fire, which were not covered. She recognized Dr. Whitesides and Captain Mitchell. Here are Ku Klux raiding in the accomplishment of their purposes, and they raise the cover from their faces and the faces of these two defendants. Has this woman any motive in coming upon the stand? and under her oath telling you that it was Dr. Whitesides and Captain Mitchell? She can have none, but desired to tell the truth. Remember, gentlemen, at this time the Ku Klux held full sway in York county; that their purposes was accomplished boldly; that the press was silent, and the voice of the grand jury and every public utterance of that kind was that it was peaceful and quiet; no outrages; no disturbances; so completely had the Klan gained possession of that county. And on that Dr. Whitesides and the chief of a Klan did not think it necessary to keep the disguises over their faces. This, gentlemen, is the evidence that connects both of these men with the Klan. I do not care whether Dr. Whitesides took the oath or not. I don't care whether he knew the signs or not. Three witnesses tell you that he was on the raids of the Klan; that he participated in its acts, and that is more conclusive of his responsibility for this conspiracy than if he had sworn the oath and joined the organization and remained at home. These two defendants, gentlemen, were members of the Order, and one the acknowledged chief of a Klan, and the other has been found on three separate occasions acting with the Order, going upon its raids and executing its purposes. Now, gentlemen, up to this point we have said nothing about the Charles Leach raid. We have simply confined ourselves to this general conspiracy, to inquire what it was, and whether Dr. Whitesides and Capt. Mitchell were members of it. We have found that conspiracy was to prevent colored men from voting, and we have found that these two defendants were connected with that conspiracy, and that they are, therefore, responsible for all the acts of the conspiracy done from the time when they first made their connection with it.

I come now, gentlemen, to the second, third, and fourth counts of this indictment, which all charge an offence committed against Charles Leach. The first count charges that they had injured him because he had voted; that they injured him to prevent him from voting; and the third, that they injured him because he had voted for Mr. Wallace, as a member of Congress; but it is all confined to one individual, Charles Leach.

Now, we are to see what is the evidence that connects both these defendants with this particular act of whipping Charles Leach. All that I have said about the testimony of Charles Foster, in the former part of my argument, applies here. Mr. Foster, Mr. Watson, and Dr. Whitesides go on this raid; they meet Capt. Mitchell with the members of his Klan, and they go to Presley Thompson's, or Presley Holmes, as he is sometimes called, and they whip him because he is a Radical; then they go to Jerry

Thompson's and they whip him, and others, because they are Radicals; then they go to Charles Good's upon the same errand; and then they go to Charles Leach's, and then to Amos Howell's, on the Howell plantation. I want you to remember Amos Howell who is whipped upon the same night as Charles Leach, Presley Good, Presley Thompson and others. This is the true testimony which connects Dr. Whitesides with Capt. Mitchell upon this particular raid; Chas. Leach did not know them; he never pretended to know them, for they were in disguise.

We come now to the defense upon this case. There is no defense upon the first count, but upon the second. The raid upon Charles Leach, they attempt to prove that upon the night on which Chas. Leach was whipped, Dr. Whitesides and Captain Mitchell were both at Mitchell's house and remained there all night. Let us see whether this is true or not. In the first place, gentlemen, the date is the important feature in this portion of the testimony; both of the Counsel who addressed you yesterday, told you that the Government had fixed the date on which Leach was whipped, as the 9th of January. Now, gentlemen, if that be true, there is evidence that Dr. Whitesides and Captain Mitchell were somewhere else on that night, but you will remember that both the counsel insisted that we had fixed that date; that subsequently Amos Howell told you that he was whipped on that night, and that he saw Charles Leach next morning, and the other victims of this raid; and that it was about the twenty-fifth, twenty-sixth or twenty-seventh of January; yet they told you that we are bound by the testimony of Foster, of Leach himself, to the ninth of January; if they can prove therefore that these defendants were somewhere else on the night of the ninth of January, they cannot be convicted of the raid upon Charles Leach; the testimony of all these witnesses is now before me and I find that neither Charles Leach nor Charles Foster fixed the date upon the ninth of January with any certainty, that Charles Foster distinctly testified upon his cross examination that he knew nothing about the date except what he had been told since he came here, had we known as much as we now know, we could have shown that this information came from the defendants; I don't want you to be doubtful about the testimony of Charles Leach, because if this raid is not located on the night of the ninth of January the *alibi* of these defendants is gone; I will read the testimony of Charles Leach; the testimony of Charles Leach therefore is simply that it was on a Monday night after Christmas and he thinks after New Year; but he does not fix it upon the night of the ninth of January, and he distinctly refuses to say that it was the Monday night after Christmas, meaning the Monday night after Christmas week, which the counsel was anxious he should fix upon as the night when he was whipped; remember, gentlemen, the claim is that we had selected the ninth of January, and fixed the date, and that we cannot say now in view of this defense that it was upon some other night; Charles Leach does not testify that it was upon the night of the ninth of January, or any other particular night in January; but simply that it was after Christmas, and he thinks after New Year; and in answer to the questions which was to fix it as on the night of the ninth, he distinctly says that he cannot say.

Then it is claimed that Charles Foster has fixed the night as the ninth of January; here is his testimony upon his direct examination, The defense intended to prove that on the night of

the 9th of January, Dr. Whitesides and Captain Mitchell were at home; and therefore, when you come to the cross-examination of Foster, you are not surprised to find that they seek to draw from Foster, with certainty, that it was on the night of the 9th of January, because they were going to prove that on that night Whitesides and Mitchell were at home, and there the cross-examination of Foster, with reference to this matter, naturally stopped: "I know nothing about the time except what I have been told since I have been here." Were I to tell you, gentlemen of the jury, what Charles Foster was told and who told him, it would not be evidence, and I cannot, therefore, inform you. But this, gentlemen of the jury, is the entire evidence of Charles Leach and Foster as to the time when this raid upon Charles Leach occurred. It was essential to this defense, gentlemen, that this raid should be on the night of the 9th of January, because they have an *alibi* already proved for that night. Now, gentlemen, an *alibi* is a swift and complete defense, but the defense have made two or three fatal mistakes in getting up theirs, and it is, therefore, utterly valueless. In the first place, they had to claim that we had fixed the night of the 9th January; but we had done no such thing. Charles Leach does not know what night it was, except that it was after the New Year, he thinks, and Foster knows nothing about it, except what he has been told since he came here.

Now, we have another witness, Amos Howell, and he says he was whipped on the night of the 25th, 26th or 27th of January, about a week before the raid upon Mr. Wm. Wilson; and then comes Mrs. Wilson, who testifies that her child was born on the 3d of February, which fixes the time of Amos Howell's whipping, and Amos Howell knows that this was the night which Leach was whipped.

Now, gentlemen, what is the evidence for the defense that Dr. Whitesides was not present at this raid? Aside from the general denial, that on the night of the 9th of January, he was sitting up with Capt. Mitchell's mother, who was sick; but what matters it, gentlemen, where these defendants were on the 9th of January? On the night of the 9th of January, you have been told, that the time laid in the indictment is of no consequence, and it is not. We give no positive evidence except the testimony of Amos Howell, who knew that he was whipped some night with Charles Leach, and that was late in January.

Now what was the testimony for the defense? First, W. C. Whitesides, a brother of this defendant, testifies that Dr. Whitesides was at Dr. Darwin's on that night, and that they passed by his house on their way to Capt. Mitchell's. The next testimony was that of Dr. Darwin, and he, gentlemen, is connected with this organization, and you are to bear that fact in mind, in judging of the value of his testimony. Dr. Darwin, at first denied that he was a member of this Ku Klux organization; upon his cross examination, he admitted that he was present at a meeting of the Klan when Mr. Albertus Hope was elected Chief. Next we have the testimony of Mrs. Howe and Miss Howe, the mother and sister of Julius Howe, whom we have proved over and over again to be a member of this order. I do not say to you gentlemen, that they are not stating the truth, but these witnesses come upon the stand with the benefit or burden of their surroundings, and their motives and their relations. The next witness is Mrs. Whisonant, a sister of Capt. Mitchell; these are the witnesses brought upon the stand to testify that on the night of the 9th of January, these defendants were at home all night with the sick

mother of Capt. Mitchell; but gentlemen, it is not enough to prove this, they must go further and show that that was the night on which Charles Leach was whipped.

Now, how have they proved that Capt. Mitchell's little son, brought here to prove that the next morning he went to the postoffice and there heard that Charles Leach had been whipped the night before? Did he see Charles Leach? He did not. Amos Howell saw him. Little Samuel Mitchell did not pretend that he saw anybody that had been whipped that night; and you must remember that he is the son of this defendant, and comes here to testify for his father. All the rest of their witnesses simply testify that they heard it from this little boy, and he heard it at the postoffice as a mere rumor. Dr. Darwin testified that on his way home next day he heard the rumor at Wiley's store; but did he see anybody that had been whipped, or did he see anybody that had seen the victim? He had not. And yet, gentlemen, that is the entire defense.

On the part of the Government, we present the testimony of one of the victims, and he saw the other victims the next morning, and the testimony is that it was late in January that the whipping was done.

An *alibi*, gentlemen, is a good defense when it is made out; but when it fails, everything is gone! The defendants stand here against the charge of whipping Charles Leach; and the defense is that on the night of the 9th January they were at home; whereas, the full and positive evidence is that it was on the 25th, 26th, or 27th January that Charles Leach was whipped.

Now, gentlemen, the case is before you, and you are now in a condition, so far as my efforts are concerned, to understand this testimony, and to see how completely and beyond controversy these parties are connected with the general conspiracy which is charged in the first count of the indictment, and how, by the positive and circumstantial testimony of Charles Foster, a witness entitled to the utmost credit, Dr. Whitesides was a member of that party who raided upon Pressly Holmes, Chas. Good and Charles Leach, on the night of the 25th, 26th, or 27th January, while everything that can be brought here to turn your minds away from the necessity of a conviction for whipping Chas. Leach, is that these defendants were, on the night of the 9th January, at the house of Mrs. Mitchell. I called your attention, gentlemen, to the case with which this story of Charles Foster could be disproved. It is circumstantial—it gives details—and if it could be contradicted, the witnesses to do so could and would have been brought here. I have not the heart, gentlemen, to dwell upon the attempt on the part of the defense to involve Charles Foster in some contradictions with reference to his identification of Dr. Whitesides as a member of a party that raided upon Charles Leach. We have the testimony of Robert Riggins and John S. Miller that when Foster left the jail he told Dr. Whitesides in response to his inquiry that he was going to Colonel Merrill to correct the mistake he had made. But I must call your attention, gentlemen, to these witnesses—Robert Riggins and John S. Miller. Who are they? If anybody was ever stamped upon his face, before his lips broke into speech, as a natural born Ku Klux, it was Robert Riggins; he is a Ku Klux, and was elected chief of the Klan at Sharon church. John S. Miller says he is not a Ku Klux, and yet confesses that he attended the Sharon church meeting; and Elias Ramsey testifies that he was at the Sharon church meeting, and saw John S. Miller. These are the witnesses who come here to prove to you that Charles Foster said

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that he would correct his mistake about Dr. Whitesides. We could not, gentlemen of the jury, exclude them from the witness stand, but you gentlemen, can exclude them and you are bound to exclude every man's testimony who is proven members of this conspiracy, and I go further, and I say that you are bound to disregard any witness who comes upon this stand, who is known to have a connection with this order, which would tend to induce them to give evidence in favor of those who are charged with this conspiracy.

Now, gentlemen of the jury, Dr. Whitesides and Captain Mitchell it is said were good men; I hope they were, whatever there may have been of good in the past of these men's lives, let them cling to it, let them hold fast to it, for their character from this hour is gone—men of intelligence and education—they have associated themselves with a stupendous conspiracy that has now come to light, and that only awaits your verdict to meet its doom, you stand face to face, gentlemen with two men who are members of that conspiracy, and who have little claim to your sympathy, under any circumstance, as any two men who could be singled out from this vast organization in the whole country, and on this occasion, and in arriving at your verdict you can certainly not dissuade to any thing less than a verdict of guilty upon all these counts against these two defendants.

A jury is always the protection of a community. You are bound to remember, gentlemen, that you are the last defense of the liberties of every man, and you are not to raise this question about the propriety of punishing these two men because you have hearts of pity and of sympathy for individuals; but you are bound to raise yourselves to the height of your responsibility, and to remember that you sit here to protect the rights of the entire community, and that your verdict is to be made up under the solemn responsibility which you are under to save the rights of the entire race, and to vindicate the claim of our country that we are enlightened and civilized and that we live under a Government which protects alike the great and the feeble, which bestows rights and defends them, which clothes an entire race, once slaves, with complete freedom; and never pauses until that freedom has been made secure against every attack and every conspiracy.

The jury returned into Court announcing that they could not agree on a question of fact, on which they were again directed to retire. At 9 o'clock on the following morning, (Saturday), the foreman returned the following verdict:

On the first and third counts of the indictment—*Guilty*. On the second and fourth counts—*Not Guilty*.

On motion of Mr. Corbin, the prisoners were remanded into the custody of the Marshal to await the further order of the Court.

Mr. C. D. Melton, of counsel for the accused, moved for a new trial in arrest of judgment.

The Court then adjourned till Wednesday morning, December 27th, at 11 A. M.

The Court met at 11 o'clock, pursuant to adjournment. Hon. H. L. Bond, presiding; Hon. George S. Bryan, Associate Judge.

The case of the United States vs. Samuel G. Brown being called; Mr. Wilson, counsel for S. G. Brown, announced that he waived the arraignment, and consented, on the part of his client, to plead *guilty* to the indictment, but would submit affidavits to the Court, before sentence was pronounced.

### MOTION IN ARREST OF JUDGMENT IN THE CASE OF ROBERT HAYES MITCHELL.

Mr. Stanbery said: May it please your Honors: The jury have found this defendant, as he stands charged in the second count of the indictment.

The offense set out in that count, is a conspiracy to injure Jim Williams, alias Jim Rainey—described as a person of African descent, over twenty-one years of age, and a citizen of the United States—on account of giving his support, in a lawful manner, in favor of the election of one Wallace, as a member of Congress.

The offense so charged is expressly provided for by the second section of the Enforcement act, passed April 20, 1871; and it is also claimed by the prosecution, that the same offense is provided for by the sixth section of the Enforcement act of May 31, 1870.

The point which we make in arrest of judgment is, that the indictment, whether framed under the provisions of one or either of these acts, cannot be sustained, because it contains no allegation that Williams was punished in reference to his vote on account of his race, color, or previous condition. There is no question whatever, that the indictment follows the very language contained in the second section of the act of 1871, for neither that act, nor the act of 1870, in defining the offenses against the right of voting therein provided, takes any notice of any interference on the ground of color, race, or previous condition of the party whose voting is interfered with. This indictment would, therefore, be good, if these acts of Congress can be sustained. They define and punish offenses against the elective franchise, such as bribery, personal violence, and intimidation to prevent the voter from exercising his privilege, and for injuries upon the person of the voter for having exercised his privilege, and for providing also against double voting, against voting out of the district where the party is entitled to vote, and in fact for almost every act which is punishable by the laws of the several States, in order to preserve the purity and safety of their elections.

The point, therefore, that we make under this motion is, that these acts, so far forth, are unconstitutional.

It is the purpose of my colleague and myself, to take this question before the Supreme Court of the United States, under the *habeas corpus* act; but as it very properly arises at this time under the motion in arrest, I will proceed to state, as briefly as possible, the grounds upon which we rely to show the unconstitutionality of these enactments, in the hope that your Honors may, perhaps, divide in opinion.

The certificate of division of opinion would be a much more ready and easy mode of putting the question before the Supreme Court of the United States, than by the circuitous proceeding of *certiorari* and *habeas corpus*.

It is under the provisions of the 15th amendment that it is claimed that this legislation comes within the power of Congress, as an appropriate means of carrying into effect that amendment. What then is the scope of that amendment? Simply this: that as to a person otherwise qualified to vote, he shall not be excluded in consequence of race, color, or previous condition, any law or regulation of any State to the contrary notwithstanding.

Now, it will be found that all the sections of the two enforcement acts which provide pun-



ishment for offenses against the right of suffrage, one not founded on race, color, or previous condition of the voter, nor for the offense in reference to the color, race or previous condition of the voter; on the contrary, they are general provisions in favor of all voters, and against interference with the right of suffrage in respect of and one qualified to vote, whether white or black.

Mr. Stanbery here read various sections of both the enforcement acts to show that they did not proceed upon any ground of protecting a voter from discrimination on account of race, &c.

He then proceeded as follows:

These sections, may it please your Honors, form, in fact, a criminal code, on the subject of elections in the States, as I have said, and as appears from the reading of the sections, they define and punish just such offenses against the suffrage, and are provided for in the election laws of the several States; and what is still worse, by express enactment in the enforcement act of 1870, it is provided, that over the offense therein defined and punished, the courts of the United States shall have exclusive jurisdiction. And this purports to take away all the right of the State and of the courts of the State, to administer their own elections laws, or to punish offenses specially provided by that legislation for the security of their elections.

What authority does the 14th and 15th amendments give to Congress to enter into such a wide field of legislation on the subject of the election franchise, and to direct the States of their right of self-protection? If, in carrying out the provisions of the 14th and 15th amendments, it was liable to punish acts committed by individuals against the purpose of that amendment, as to which there may be some doubt, yet such positive legislation by Congress could not extend beyond interference with the right, on the specific ground of the color, race or previous condition of the voter.

It might be said, that legislation of that kind would be appropriate to carry out the object of the fifteenth amendment; but, as I have said, in all the punitive clauses of these two enforcement acts this matter of discrimination on account of color, and of interference with the suffrage on that account, are totally wanting. What has the offense of voting twice at the same election to do with the fifteenth amendment? In what way does the offense of voting but at one district interfere with any right to vote on account of race or color? I might go on to enumerate all these various offenses so provided against, but these instances must suffice to show into what a field of legislation the exclusive jurisdiction of the Federal courts is carried by these two acts.

Your honors will further observe, that the enforcement act of 1870, especially, makes all these offenses to be applied in the case of all elections within the State, not merely for members of the House of Representatives, territorial delegates, and election of President and Vice President, but of all descriptions of State elections and of State officers, whether executive, legislative, or judicial.

There never has been a bolder sweep taken to enlarge the powers of the Federal Government, or to strip the States of their essential rights. I understand it, however, to be claimed by the prosecution, that the act of 1871, which provides for the offenses of conspiracy to prevent the voter from voting at an election for representatives in Congress, or for injuring a party subsequently on account of his having so voted, although it may not be appropriate legislation under the fifteenth amendment, may yet be supported as appropriate legislation under another section of the Constitution, to wit, that which provides for the regulating power of Congress in the matter of elections of representatives of Congress, in respect to times, places, and manner of such elections.

It is obvious that the regulating power, overtimes and places, would not justify this species of legislation, for the only question that could be made would be upon the use of the word "manner." The meaning of this has always been understood as having reference to a choice between voting by ballot or *à la voce*, or by general ticket, or single districts or double districts, or

whether a majority of all the votes cast is necessary to elect a candidate or, as in some States, by a plurality of votes as in others.

Mr. Stanbery closed by referring to Story in the constitution as follows:

"The States now regulate the time, the place and the manner of elections in a practical sense exclusively. The manner is very various, and perhaps the power has been exerted, in some instances, under the influence of local or party feelings, to an extent which is indefensible in principle and policy. There is no uniformity in the choice or mode of election. In some States the representatives are chosen by a general ticket for the whole State; in others they are chosen in districts composed of a population sufficient to elect two or three representatives, and in others the districts are sometimes single, and sometimes united in the choice. In some States the candidate must have a majority of all the votes to entitle him to be deemed elected; in others, as it is in England, it is sufficient if he has a plurality of votes. In some of the States the choice is by the voters, *à la voce*, as it is in England; in others it is by ballot. Story in the constitution, vol. 1, sec. 826, p. 573."

The Court here denied the counsel for the Government to proceed with another case.

Mr. Corbin announced that he was ready to call the case of the United States vs. John S. Millar, who was before the court.

The following jurymen were then empanelled and sworn:

John Nott, colored; Phillip Salter, colored; C. H. Bankhard, white; Joseph Keen, colored; Joseph Smith, colored; Cyrus Aiston, colored; Wm. Smith, colored; John Freeman, colored; Henry Forbham, colored; Jos. Munnerly, colored; John A. Fugh, colored; E. Johnson, colored.

Mr. C. H. Bankhard was appointed by the court foreman of the jury.

John S. Millar was then arraigned on the following indictment:

That John S. Millar, together with divers other evil disposed persons to the jurors aforesaid as yet unknown, late of York County, in the State of South Carolina, at York County, in said District, and within the jurisdiction of this court, on the 28th of April, A. D. 1871, unlawfully did conspire together with intent to violate the first section of the act entitled "an act to enforce the rights of the citizens of the United States to vote in the several States of this Union, and for other purposes," approved May 31, 1866, by unlawfully hindering, preventing, and restraining divers male citizens of the United States of African descent, above the age of 21 years, qualified to vote at any election by the people in said county, district, and State, from exercising the right and privilege of voting and by other unlawful means, not allowing them, the said male citizens to vote at an election by the people to be held on the 3d Wednesday of October, 1872, within the county, district and State aforesaid, contrary to the act of Congress, in such case made and provided, and against the peace and dignity of the United States.

Mr. Corbin said: Gentlemen of the jury, I desire only to offer you one word of explanation in reference to the text, that will be presented to you. The indictment which has been read to you contains but one count. We shall show to you first, that this defendant is a member of the Ku Klux Klan; that he was present at two meetings of the Klan. We shall show to you the nature and purpose of the Klan, how they were to be carried out and how, that they were carried out by whipping, and killing the colored members of the Radical party, and practicing all sorts of atrocities upon them, and committing all crimes known in the catalogue of offences, and this for the purpose of hindering, preventing and restraining them from exercising the right to vote.

TESTIMONY OF ELIAS RANNEY.

Elias Ranney, a witness for the prosecution, being duly sworn, testified as follows:

I live in the southwest portion of York county; I know the prisoner, Millar, and have known him for



Three or four years I was a member of the Ku Klux Klan; Chambers Brown swore me in at Hickory Grove, in York county [the constitution and by-laws of the Ku Klux Klan organization were here read]; that is the oath to which I swore when I was initiated; the oath was read, and I repeated it after Chambers Brown; I saw four others initiated after that, in May, and also one at another time; I was at one regular meeting of the order, when they were to elect officers; Squire Samuel Brown was there; also, Chambers Brown, John S. Millar, Napoleon Millar, Samuel Persson, William Sherer, James Sherer, Hugh Sherer, Sylvanus Sherer, Hugh Kell, Banks Kell, Sheron Childers, Robert Riggins, Henry Warlick, Robert Mayes Mitchell; that meeting was at Sharon Church, in the eastern portion of York county, about eight or nine miles from Yorkville; the meeting was called to elect a chief; those who were in favor of Robert Riggins stepped forward, and in this way they voted; I did not notice John S. Millar step forward, but I know he was present in the meeting when it voted; next, they elected in the same way a monarch, Chambers Brown; next, they elected the clerk, and then they elected a committee of three to examine candidates for admission into the order; Wm. Sherer was one, Banks was another, and I was another.

The general purpose of the Ku Klux Klan order was to keep the Radical party from voting, and this they were to do by raiding amongst them in the night time; then, on these raids, they were armed with pistols, and used disguises on.

I never was on but one raid; that one Jim Williams; we met about Squire Wallace's about ten o'clock; we were about nine in number; then we were joined by another party of about twenty-five, making thirty-four in all; Hugh Kell halted the other party as they came up; "who goes there?" said he; "Friends of our country," they replied, on which they were ordered to advance; it was at this time that the four Sherer boys were sworn in; the whole party then mounted and started down the road by Wallace's, passing by Henry Latham's, where we got water; we went on to McConellsville, and I heard talk among the crowd that the object of the raid was to seize guns; we stopped and dismounted, when most of the party started off, but Chambers Brown told me to go back and remain with the horses, and, in case I heard a pistol fired, to bring the horses; while I was remaining there, two men, Mr. Love and Mr. Latham, came up; I halted them and told them to remain there till further orders; Alonzo Brown, when he came back, spoke to them; he asked Mr. Love if he knew where any guns were, and Mr. Love said that the guns were about Bethesda Church; major of the militia, he understood, had them.

As they went on I noticed they had a black man on a mule, and some one in the party told them to set him down; the crowd crossed the railroad, and in traveling on they became scattered very much, especially as the roads were muddy, and I suppose it was a 100 yards from the head of the line to the rear, or more; shortly after we struck the woods I heard them say that they were going to hang Jim Williams; we traveled on I suppose, two miles from where we stopped when the crowd got off their horses, and hitched up; I heard no order given, but the front part of the crowd went off through the woods; I sat down; they were gone perhaps half an hour; presently Hugh Kell came past me and John Caldwell came up; while they were absent I heard something like the voice of a woman in distress; when they came back they mounted their horses and cried; as we got into the old field James Neil said to me something to the effect that the men were hard on the horses; we went on through the field some distance, and came out into the big road that leads from York to Chester. The first house we came to is a black man's on the right of the road; there were several persons in the house, and as I rode up with the party, I heard Mr. Bratton say, not to go for the old man if he behaved himself, if he would be a good old man he would not be whered.

Just after passing Mrs. Bratton's, we fell into one, and one portion of the crowd to the right, and the other to the left, I was with the left; the party I was with, went up the big road to John S. Bratton's house, where we stopped a few minutes till the party that had taken the right came up, with several guns that they had taken; then I rode up, crackers and whisky was passing around among the men; some of the boys told there was ham and cheese, but I didn't get any; the guns they had looked number to number about twelve to fifteen.

William Wilson then said he wanted five of six men to go to J. S. Bratton's house; I was one of them that went; we went into his piazza and hollowed; at last he came out in his underclothes; they asked him what he meant by so many guns being on his place; that if they caught any more guns on his place, they would hold him responsible; he said he didn't own all the black people, and to hold him responsible it was not right; he also said he had not voted the Radical ticket. We then left.

Chambers Brown said, speaking about some niggers in Chester, if these niggers didn't leave they would go like Jim Williams—that he was hung for his principles. He said he was an old Radical amongst the niggers down there, and that he consumed a great deal of time chustering with his company.

Cross-Examination by Mr. Wilson.—Q. Was John Miller ever sworn into the Ku Klux Klan? A. I never saw him; I never saw him initiated, and don't know of his being on any raid of the Ku Klux order; I never saw him at any meeting, except at Sharon.

Q. Do you know why he went to that meeting that night? A. No, sir; I didn't ask him his reasons.

Q. Do you know of his going with a cousin out of curiosity? A. I don't know; the Ku Klux didn't allow a man in without he was going to be a member—they didn't allow them in their secrets.

Q. Why did you go into the Klan? A. I went into it for protection. The Ku Klux came to my house in November, 1870. I had been away and came back ten o'clock, and a black man had stole some money from me, and I went to get a warrant; about three hundred yards from the house I meets up with the Klan. They frightened me, and I went back; they rode up, and I asked what in hell I meant; I told them I meant nothing only I was on business. They wanted to know what in hell business I was on; I told them I was after a warrant to arrest a nigger for opening my store. They put me under arrest, and went into the yard, and there were in the store drinking whisky and taking tobacco. After that they took my brother-in-law, and said he was the man they wanted, and told me to go and "tell that distre'd woman we are not going to hurt her husband; we are going to whip him." I went to the house and told my sister that they wasn't going to kill him; they took him off, and I heard the locks very plain; when they left they says: "Now, God damn you, you close this business." I said I was owing something, and what I was I do. They says, we don't "mean that you should close right now, but damn you, close it as soon as you" possibly can. We won't pay you but one more visit. In three or four weeks after that, Hugh Kell told me to move off what whisky I had in the house for the Ku Klux were coming on me to-morrow night again; that was on Thursday, before Christmas; I moved all the whisky out, and rode up to Yorkville, and I meets up with Theodore Byers, and he got to talking with me and asked me, and said, "don't you want to join this order?" I told him "No, I didn't know," and he commenced giving me signs. I didn't understand, and he says, "Damn it, you don't know nothing." Says I, "No, I don't know nothing about your signs." He says, "If you want to go into this thing, you go to York and Major Avery will initiate you." Sometime after that I seen Chambers Brown, and he named it to me, that he wanted me to join; I told him I didn't believe I would, and the next time I met with him, on Sunday morning—the morning I was initiated, he said I had better go into it, for he had saved my life that night they were at my house; that they would have shot me if it hadn't been for him. I concluded then to go in it, and he said, "I want you to come with me to-night on a raid on the treasury. I said I wouldn't go there. Well, he swore me in that morning.

Q. Did you ever see Mr. Millar with a disguise on? A. No, sir.

Q. All you know is that you saw him at that meeting at Sharon? A. That is all.

Re-Direct Examination.—Q. Did you see him with a pistol there? A. No, sir, no pistol.

TESTIMONY OF ANDREW KIRKPATRICK.

Andrew Kirkpatrick was the next witness called for the prosecution. He was duly sworn, and said:

Direct Examination by Mr. Corbin.—Q. Do you know the prisoner? A. Yes, sir; I have known him two or three years.

Q. State whether you have seen him at the meetings of the K. K. K.? A. I have seen him at one meeting at

Sharon, along about the last of last April or first of May; Henry Warlick told me of the meeting; Chambers Brown was chief until that night, and then Robert Rigging was elected.

Q. How did they vote? A. Every man that preferred him stepped off to one side, and then in favor of Chambers Brown to the other side; they elected Rigging as chief, Fol. Miller as lark, and Chambers Brown as monarch.

Q. Did Millar vote with the rest? A. Yes, sir; I think he did; he stepped off with the rest.

Q. Did you attend any other meeting at Sharon? A. Yes, sir; we met there the night we had the little rifle, a week or two after this meeting; John Miller was at that meeting, but he didn't go on the raid; when we met we went to putting on disguises.

Q. Do you know whether Millar had a disguise, or not? A. No, sir; I don't think he had; those that didn't have disguises didn't go on raids; the first place we went was to Squire Sam. Brown's; we just went to see him to have a fuss I reckon.

Q. You knew him to be a member of the Klan? A. I seen him at a meeting.

Q. What did you do at his house? A. We brought him to the gate, and some of them was talking to him; I couldn't hear what they said; we then went to Ed. Byers' and brought Sam Ramsay out.

Q. He was a member of the Klan, too, wasn't he? A. He was with us that night a little while; we only made him run across the yard a time or two.

Q. What did you do next? A. The next place we went to, I think, was Charles Ramsay's; he brought out Charley Russel, a colored man living with him, and made him dance a little; the reason they brought him out was because he had made his brags that the Ku Klux could never catch him.

Q. Where did you go next? A. Went home.

Q. You have been on other raids? A. Yes, sir; some three, I believe; I was on the Jim Williams raid and the Henry Latham raid.

Q. What did you do to Henry Latham? A. He was whipped that night.

Q. How old are you? A. Twenty years old last June.

Q. When did you join? A. In February.

Q. Who swore you in? A. Chambers Brown.

Q. Do you remember the oath? A. I remember the last part of it, that the traitor's doom should be death! death!! death!!!

Q. Listen to this, and see if you recognize it? [Reads obligation.] A. It may be the same one or not.

Q. What about the last portion? A. It is the same, I believe.

Cross Examination by Mr. Wilson.—Q. Can you be positive that John Millar voted at the election of Chief? A. I think he stepped over, but I won't say for certain.

Q. Did you ever see him with a disguise on? A. I never did.

Q. Did you ever see him on a raid? A. No, sir.

Q. Do you know whether he went to that Sharon meeting, out of curiosity to see what it was? A. I have heard of that since then.

Q. Do you know whether Millar was uneasy for fear of the Ku Klux? A. No, sir; I don't know whether he was or not.

Re-direct Examination.—Q. When the vote was taken did all the parties that were present step one side to indicate their preference. A. Yes, sir.

#### TESTIMONY OF JOHN RAMSEY.

John Ramsey was the next witness called. He was sworn and testified as follows:

Direct Examination by Mr. Corbin.—Q. Do you know this prisoner? A. Yes, sir; I have known him for two or three years.

Q. State whether you are a member of the Ku Klux Klan? A. Yes, sir; I was initiated in 1868, at Yorkville, Q. By whom? A. There was four or five in the room; Squire Sam. Brown, James Elmerfort, Albertus Hops, and I think Wash Hope.

Q. Do you recollect any portion of the oath? A. I recollect about not to divulge, nor cause to be divulged any secrets. [The oath was read to the witness, and he continued:] I don't recollect whether there was that much of it or not.

Q. What was the process of initiation? A. I was blindfolded, and knelt down on the floor; I think Squire Sam Brown swore me in, but I don't know.

Q. Were any signs given to you? A. Yes, sir; the first was something similar to that [passing the right hand over the right ear], and the other was to return it with the left; then the second, I think, was to feel as if you was feeling for a pin [indicating the left lapel of

his coat]; the next was to slip the right hand into your pocket and leave your thumb out, and the answer was with the other hand; then, if you was passing, and me up with a man, and wanted to find out whether he belonged to it, "I-a-a-y," and he would return, "N-o-o-h-l-a-a-g" the grip was to lock the little fingers together; the last meeting I attended was at Sharon Church.

Q. Who were there? A. Alouzo Brown, Chambers Brown, John S. Millar, the prisoner, Napoleon Mills and Dan Carroll, and my brother, Sam, and Andy Kilpatrick, Robert Riggies, and some of the Sherer boys.

Q. Do you allow persons to be present at meetings? the Klan, who are not members? A. No, sir; only when they wish to be initiated.

Cross Examination by Mr. Wilson.—Q. Did they sometimes allow persons to come with their friends, to see whether they would join or not? A. No; I never knew any person to come; I don't know of any case of this kind.

Q. You don't know whether Mr. Millar was ever initiated? A. I don't know that he was.

Q. You didn't see him with a disguise, or pistol, on any raid? A. No, sir; not that I recollect.

#### TESTIMONY OF SAM. FERGUSON.

Sam Ferguson was the next witness called, and was sworn and testified as follows:

Direct Examination by Mr. Corbin.—Q. Whether you attended any meeting of the Klan at Sharon Church? A. Yes, sir; the last of April, some time; John S. Millar was there; Robert Rigging was elected chief that night, and Pal Millar and Chambers Brown, to the two other offices.

Q. How did they elect them? A. Then the was going for one, would stand one side, and them that was going for the other, would stand on the other side.

Q. Did you see this defendant voting or not? A. I don't mind whether I seen him vote or not I seen him there.

Cross Examination by Mr. Wilson.—Q. Do you know that Ku Klux visited and threatened you? A. Yes, sir.

Q. Do you know that they visited, and threatened John Millar the same night? A. Yes, sir; think I heard Pal Millar say so; he said he was there.

Q. Did he say anybody else was with him? A. Aly Stewart, I think.

Q. Did he state whether they went in disguise or not? A. Didn't say; I know they had their horses covered; that was about two months before the meeting at Sharon.

#### TESTIMONY OF THOMAS S. BERRY.

Thomas S. Berry was the next witness called. He was duly sworn, and testified as follows:

Q. State whether you were ever initiated into the Ku Klux Klan? A. It was last January at Wm. Smith's; I had to kneel down, and there was a Bible a book in front of me, and I was blindfolded, and a oath was administered to me.

Q. I will read the oath to you and see whether it the one you took. [Reads the obligation?] A. Yes, it the same, sir.

Q. What do you understand were the object of the Klan? A. My notion was that it was to tear down the party in power, and build up the other party.

Q. How did you understand that purpose was to be accomplished? A. Well it was to be done by whipping and killing the members of the Radical party; I knew one man that was killed by them—Charley Good. As he was meeting I met Wesley Smith, and inquiring he knew anything about Charley, and he says "Yes, you quit inquiring for Charley Good," for says he "he killed." I says "in the name of God Wesley, and whom?" And he ups and tells me that he and Wm. Smith and Spencer, and Wm. White done it.

Q. How many days after that I met White, and says "you killed Charley Good." He says "yes, we a single barreled and a double barreled gun, and laid for him and tied him to a pine sapling, and a him." I know that he was put in the river.

Q. Were you present? A. I was, sir; I was not to come that evening by Madison Stuart and I refused. He says "you have never done anything, and I have got to go. They are threatening you now, I suppose I will have to go; we found the body in the pine sapling. He was lying on his face, but didn't smell any. He was perfectly dead. White when he shot him, he turned the butt of his gun

ink the cock in his head. We first put the body in some bagging, and carried him to the river and put him in it.

Q. Who put him in? A. Pinck. Caldwell, I think.

Q. What sort of a man was Charley Good? A. He was a very good man, and I think bore a good character in the community.

Q. What was the object in killing him? A. I don't know.

Q. What were his politics? A. He was a Radical.

Q. Was it the understanding that he was killed pursuant to the purposes of the Klan? A. Yes, sir.

Q. What proportion of the white people in the eastern portion of the county where you live belongs to the Ku Klux? A. All belong to it; nearly all; very few exceptions.

Q. Have you heard from members of the Klan of other murders? A. Yes, sir; there has two gentlemen told me that, on the 8th of March, I think, about Turkey Creek bridge, they shot a couple of negroes on the bridge own there. They were Joe Smith and Pinck. Caldwell; they said they put them up on the banisters of the bridge and shot them; and he fell back on the bridge and the other fell in the creek; they shot at him several times before he fell, when he first fell, he swam to a little pile of trash, and they shot him there.

Q. Give the names of the negroes? A. Sam Kafe and Eli McCollum.

Q. Whether you know anything about the Leach murder? A. Well, William Leach told me that it was Mitchell's Klan that done that, he and John Wallace.

Q. You know them to be members of the Klan? A. Yes, sir; I do.

Q. Who was the Chief of your county? A. Major J. W. Avery, I think, sir; so said.

Q. Who was Grand Cyclops? A. General Forrest; that was my understanding in the matter.

Q. Who was the Cyclops or Chief of this State? A. Banks Lyle, sir; I think.

Q. Whether strangers who were not members of the order could attend meetings or were allowed to? A. Not without signs, sir; they were asked by the password and by certain signs.

Q. Would any man be allowed to come from curiosity or anything of that kind? A. No, sir.

Q. What is your understanding of the penalty for revealing any secret of the Klan? A. It was the traitor's doom, sir; death! death! death!!!

Q. When and how was this raiding and murdering done? A. In the night, and indistinguishable.

Q. What was the disguise? A. Well, I never saw but a few. Some few of them was made out of solid calico, and others was made out of Northern homespun. The men came down about that far [indicating below the knee]; some covered the boots. It rested over the shoulders. Around the head they wore a hood.

Q. Would they disguise their horses? A. Yes, sir; they had their horses covered.

Q. Did they disguise their voices? A. Yes, sir; generally they would talk in broken Irish.

*Cross-Examination by Mr. Wilson.*—Q. Strangers were not allowed to attend Madison Smarr's Klan without the pass word; do you know what was the practice in Chambers Brown's Klan? A. I don't know anything about that.

Q. If one was not a stranger; if he was known in the neighborhood and an officer of the Klan, were to bring him in with him, do you not think it possible he might come in that way? A. No, sir; it would be out of order to take a man into a Klan without they knew him to be a Ku Klux.

Q. That was the practice in Smarr's Klan? A. Yes, sir; and I suppose it was everywhere.

Q. You have never met this man on any raid? A. No, sir.

*Re-Direct Examination.*—Q. Can members of one Klan visit another Klan? A. Yes, sir; if they was known to be members.

#### TESTIMONY OF LAWSON B. DAVIS.

Lawson B. Davis was the next witness called, being duly sworn, he testified as follows:

*Direct Examination by Mr. Corbin.*—Q. What was your position in the Ku Klux order? A. At the only meet-

ing I ever attended I was appointed secretary of the order.

Q. Examine that paper, and see if you recognize the oath [passing obligation to witness]. A. I recognize it as the same, with the exception that, in the second section, if my memory serves me right, where it speaks of opposing Radicalism, the assertions were the 13th, 14th, and 15th amendments, the 14th I am satisfied.

Q. What do you say, then, was the general object of the order? A. The object of the order was certainly aimed at the Republican party.

Q. And what were the means to be adopted?

A. The only meeting that I attended, the propositions brought before the Klan were, that persons who were prominently connected—colored and white—as leaders in the Republican party, and members of the League, were to be visited and told that they must discontinue their connection with the party. The second visit these persons were to be whipped, in case they didn't discontinue their connection; the third was a request to leave the country. In case they refused to leave the country, then they were to meet the penalty of death.

Q. Do you know that the purposes of the order were carried out in this manner? A. Yes, sir; in one instance—the Charles Good case. He was whipped, and a short time after he was killed. The parties who done the murder were William Smith, and Wesley Smith, in connection with William White and Leander Spencer.

These men, Spencer and White, didn't tell me that they assisted in the murder, but William Smith and Wesley Smith told me that they took part in it. They told me that he had been watched and way-laid; they shot him, and then finished him with a rock; they were summoning men to assist in concealing the body; he was killed on Wednesday, and this was on Friday; they said their intention was to get the white men in the community to assist in removing the body; he said he didn't want anything left behind, so that no information could leak out in reference to Good; I went to Mr. Howell's that evening, and he told me he had received the same information, and we staid until the time had passed; then we went to the place, and there was nobody there; Thomas L. Berry, Wesley Smith, William Smith, and Pinckney Caldwell came back that way, and stopped and talked a while; they said I had escaped a scourging, for he was very heavy; Pinckney Caldwell said he was hard to sink; but he had sunk him; for he says, "I jumped on the body in the river, and fastened it as well as I could, with a stake." Wesley Smith said he had a cotton bagging around the body, fastened with some chains and some plow shares.

Q. What kind of a man was Charley Good? A. I don't know anything particularly against him, more than his principles.

Q. Did you ever know of such an occurrence as this: of a person who was not a member of the Ku Klux order being admitted to attend one meeting and going away? A. No, sir. There was never any person present unless they were sworn.

Q. Was such a proceeding as that according to the rules of the order? A. It was not according to the rules of the Klan where I was admitted.

Q. Did you ever hear of it being done anywhere? A. No, sir; I did not.

*Cross-examination waived.*

The court here took a five minute recess. When the judges had taken their seats, Mr. Corbin stated that in the case of Samuel G. Brown, he was an old gentleman, and quite unwell, and inasmuch as he had come into court and pleaded guilty, he felt that there was no danger of his attempting to escape, and he would, therefore, not ask the court for the usual order to the Marshal, to take the defendant into custody, but would move that his bond be increased to \$10,000, and he be allowed to attend the court, from day to day, until a final disposition of his case had been made. This was allowed, and the court resumed the hearing of the pending case:

*TESTIMONY OF BIRKLAND L. GUNN.*

Birkland L. Gunn was the next witness called. He was sworn, and testified as follows:

*Direct Examination by Mr. Corbin.*—Q. What do you say were the purposes of the Ku Klux order—political

or not? A. They were political, and against the Radical party; the object was to be carried out by killing and whipping—killing the men in office, and whipping the voters, so as to intimidate them, to keep them from voting for men to put them into Radical office.

Q. Were the meetings of the Klan secret or public? A. Always secret.

Q. Whether persons not members of the order were allowed to attend meetings? A. Never were allowed to attend any meetings unless they had been initiated.

Q. What was the penalty for revealing any secrets? A. Death.

Q. Was it admissible for members of the Klan to tell each other what had occurred? A. It was owing to the nature of the case.

Q. Did you ever know of any person being allowed to attend meetings of the order who was not there for the purpose of being initiated, or because he was a member of the order? A. Never knew any one except members to attend a meeting in my life.

Q. Ever hear of such a thing? A. Never heard of it, sir, from the fact that such a thing never occurred.

Cross Examination by Mr. Wilson.—Q. Did you ever attend a meeting of Chambers Brown's Klan? A. Never did.

Q. Has your attention ever been called to whether any officer or member of the Klan might take in a friend, without anything more than his endorsement? A. Never heard of such a thing.

Q. You don't remember any case of that kind? A. No, sir.

The court here adjourned until 11 o'clock Thursday.

## TWENTY-SECOND DAY'S PROCEEDINGS, DECEMBER 28.

The court met pursuant to adjournment, Hon. H. L. Bond, presiding; Hon. G. S. Bryan, Associate Judge.

On motion of Mr. Corbin, John Caldwell, a prisoner, held as a witness, was admitted to bail in \$500 security.

### TESTIMONY OF CHARLES W. MOSTER.

Witness for the Government. I reside in York County, and have been a member of the Ku Klux organization in that county; the purpose of the order, as I understood, was to put down Radicalism, by whipping and killing out the members of the Radical party; the Klan is bound by oath to secrecy; no one is allowed to enter the order unless they are members; the penalty of divulging any of the secrets of the organization is death! death! death!!! according to the constitution; persons who were not members of the order were not allowed to attend its meetings, and there were sentinels, always, at their meetings, to keep away those who were not members.

Cross Examination by Mr. Wilson.—I belong to Capt. J. W. Mitchell's Klan; I never was present at a meeting of Brown's Klan.

By Mr. Corbin. A. I know Chambers Brown; I have seen him frequently; I have seen him on raids; I have seen him on the Bill Wilson raid when seven or eight colored people were whipped; Johnson was in command of that raid; I was on the raid myself; I do not know of any difference in regard to the usages of the Klans and their object. Brown's Klan and Mitchell's Klan were the same in their purposes and objects, and the members of the different Klans regarded themselves as brethren.

Mr. Corbin here offered in evidence the constitution and by-laws of the Ku Klux organization:

The counsel for the Government announced that they here closed this case.

### TESTIMONY OF DANIEL MCCLURE.

I live in York county, with Mr. John Miller, that gentleman, [pointing to the prisoner.] I went to live with him last January; the Ku Klux visited us while I lived with him; they came twice to Mr. McClure's house; that was the 31 week in March; I lived there at the time; they

came there in the night; they made a noise and waked us up, and called for Mr. John Miller; they also called for the captain of the road; that was myself; I had been appointed captain of the road by the influence of Mr. Miller; there were so many men appointed to work on the roads, and I had the overseeing of them; when the Ku Klux came to the house, his mother said there was no body there but an old woman, and for God's sake they were not to scare her, and Mr. Miller went into a room and hid when we heard them; I am not sure that the men were disguised; the moon was shining and the men rode on white horses; I don't think the horses were white, but they were covered with something white; after they left us, they went up the road and enquired for Alex. Wallace, Mr. Kell, Mr. Black; old Black is a Squire, and used to marry colored people; I think he was a Radical; and so was Mr. Kell; I knew there were some guns in the organization that were left with Mr. Miller, and I heard of some of Mr. Brown's; I knew my brother left his gun with Mr. Miller, and another colored man by the name of Brook Burrs; the Ku Klux came on my brother because he was a class leader in the church; he and I and Mr. Miller were all raised together, and the guns were brought there to prevent the Ku Klux from getting them and breaking them to pieces; Mr. Miller took care of them; I don't think Mr. Miller was in favor of the Ku Klux organization; I know he told me he was scared of them, and I thought by this that he was in favor of them; I don't think Mr. Miller had a pistol or a Ku Klux gown; Mr. Miller was regarded by the colored people in that neighborhood as a friend to the colored people, and a man of kindness and fairness towards them.

Cross Examination by Mr. Corbin.—I knew Chambers Brown; I don't know anything against him, I only just know him; if Mr. Miller had had a pistol, I should most likely have known it; I knew all the things in the house that he had; I knew he had a gun, he said he found it, but he didn't tell me where; I don't know that any guns were taken on the Jim Williams raid, and I don't know of Mr. Miller getting a gun at that time.

By Mr. Wilson. The gun was kept in the cooking kitchen where I said.

### TESTIMONY OF EDWARD ROSS.

I live in York county, on Mr. John Miller's plantation, I have been in Mr. Miller's employ for two years; I don't know that Mr. Miller ever interfered in any way with the voting of colored people; I voted the Radical ticket, and Mr. Miller knew it, and never tried to induce me not to do it; I don't think Mr. Miller voted in any way; I don't know what his reason was, but the day I went to vote I asked him if he was going, and he said he was not, but if he was he did not know but he would vote the Radical ticket; that was in the fall election of 1870; I told him I had never voted anything else but the Radical ticket, and expected to do so again; Mr. Miller's general reputation among the colored people for fairness and kindness, as far as I knew was very good, I never heard any harm of him. As to any guns being kept at Mr. Miller's, I heard a colored man say that Mr. Miller kept his gun, and that was to prevent the K. K. from getting it. In the spring, Mr. Miller talked as though he was opposed to the K. K. organization.

Cross Examination.—I never went out with the K. K., but I have laid out all night, as other people in the settlement did, for the colored people there who had voted the Radical ticket were being whipped and killed, and I was very much frightened about that. I don't think it was generally known who were members of the Ku Klux Klan and who were not.

### TESTIMONY OF DANIEL CARROLL.

Witness for the defense:

I know Mr. John Miller; I lived about two miles away from him; I have known him for the last fifteen years; I think he was in favor of the Radical party; he had a great many hands to work for him, and it was necessary he should favor the Radical party or his hands would have run off; I judge what his politics were from his having colored hands in his employ; I think he had kindly feelings towards the Radical party; I know of Mr. Miller's being present at the last meeting of Sharon Church; I was there with him, and his object was to find out the purposes of the organization.

Testimony objected to by the prosecution.

I know my object in going there was to save my own bacon and my hands too, and I think Mr. Miller went there to save his hands; I have heard him say he went there to save himself and his colored hands that were working under his control; I knew Mr. Miller was opposed to the Ku Klux organization.

*Cross-Examination by Mr. Corbin.*—I was opposed to the organization though I attended one of its meetings; I was not present at the Jim Williams raid, and I was not sworn in; I was obliged to join the organization; I voted the Republican ticket, and all the hands I had also voted the Republican ticket; I thought it better to join the organization; they had whipped and hunted a great many people, and they were putting cards in the paper about those that were not Radicals, and it was to prevent more mischief being done that I joined the organization; I had been a soldier in the Confederate service, and I knew how to fight, having tried it for four years, and I can't say but that I was afraid of the Ku Klux organization, and that was the reason why I joined them; I did not associate with them at all; I admit that I joined the society and took the oath, but it was to protect myself and my colored hands; whether Mr. Miller joined the organization without taking the oath, I do not know, and I do not of my own knowledge know anybody that did.

The defense announced that they here closed their case.

#### ARGUMENT OF MR. WILSON.

May I please the court and gentlemen of the jury? My duty as the attorney for the prisoner, requires that I should present his case in accordance with the real position that he occupies, and in the light of the evidence which he has produced before you. And from that stand point I am satisfied that he was a Radical; that he sympathized with the Radical party; that he never contemplated or desired to join in any combination whatever to prevent the colored citizens from voting in any election. That his true motive in being present at the Sharon meeting house, on the 1st of last May, and on another occasion about a week after, was simply as a witness upon the stand, to protect himself and to protect the colored men in his employment. The evidence shows that he went there, not as a conspirator against the rights of the colored people, but to protect the colored people and himself. I submit to you in perfect frankness and candor, as the truth of this case, that the prisoner was not only not a Ku Klux, that he was not engaged in this conspiracy, but that he was opposed to it, and that he was a Republican and a sympathizer with the Republican party, and I will leave you, when I get through, to look over the testimony and see whether that is not, on your oaths, the truth of this case.

Much has been offered in the way of testimony to show what was the object of this K. K. conspiracy, what has been its plans, and what were the acts committed in carrying out its object. It will be contended that it was a conspiracy to prevent colored people from voting in October, 1872, and that each member of that conspiracy is responsible for the acts of the conspiracy; that because the prisoner was present on two occasions at Sharon meeting house, that therefore, he was a member of the Ku Klux conspiracy, and that, therefore, you ought to find him guilty. That will be the line of argument to be pursued by the counsel who is to reply to me. Gentlemen, it is not the duty of jurors to listen only to the case as presented by the counsel for the Government. They, of course, have their duties to perform, and you have yours. Your duty requires you to listen to both sides, to form your judgment upon the evidence in the whole case, and not to decide this case as if it had been only proven that John Miller was present at a meeting of the Klan on one or two occasions. For there is further evidence in the case. Had the evidence stopped there—had there been no witnesses to prove that he was there for a legitimate purpose, the counsel might, with great force and justice, say that he joined in this general conspiracy. But when witnesses come upon the stand, sworn to tell the whole truth, and when the jury go into that box, they are to decide by the whole evidence in the case. Now, the question before you is simply not whether Mr. Miller was present on these two occasions, but why was he there? What did he go there for?

What is Mr. John Miller indicted for? There is but one charge against him. The grand jury have ignored and thrown out the other charges that the Government counsel had placed in the indictment. The only count on which they have found a true bill is, did he conspire with divers other persons, with the intent to violate the first section of the act entitled, an act to enforce the rights of citizens to vote, etc., approved May 31, 1870? Did he conspire with the intent to prevent colored people from voting in October 1872?

The first question for you to determine is whether his presence at Sharon Church upon those two occasions proves positively that he was conspiring to violate the first section of that act, for that is all he is to be tried for. Is it only possible for him to be there for that purpose and no other? Is it possible that that shows his intent, and that he had no other? His intention constitutes the essence of the thing. When a man is tried for crime, his intention is the essential point. The language of the indictment is that he intended to violate the first section. You have to decide from the evidence what his intent was. You have positive proof what his intention was. He was not himself allowed to go upon that stand and swear what his intent was, but Mr. Daniel Carroll, who went with him, tells you what his intention was, tells you that he was a Republican and voted the Republican ticket. He tells you that he went to those meetings to save himself from the violence of the Ku Klux organization, and to protect the colored people in his employ.

The witness says, that he talked this matter over, with Mr. Miller, who told him that that was his object. This is the testimony of the man who went to that meeting with Mr. Miller. Mr. Miller is shown to have been afraid of the Ku Klux. Why did they visit him at night, during the third week of March, in that same Spring? They went to his house at night in disguise. They called for him, and the Captain of the road, Daniel McClure, a colored man in his employ. Does not that look as though the Ku Klux intended to visit some punishment upon Mr. Miller? Why did not Daniel McClure hide out. Does it not show that they were both alarmed, and fearful of this organization. And you will remember that they enquired for three men, all of whom were known to be members of the Radical party. It shows that they placed Mr. Miller, and the colored man Dan McClure, all in the same list; and the Ku Klux raid was upon the whole of them. Is not that a circumstance to show what Mr. Miller's intention was in going to Sharon church?

Again, Dan McClure was the captain or overseer of the road; he was appointed by Mr. Miller's influence. It appears further, that the guns belonging to the colored people were in Mr. Miller's charge. How did they come there? They were placed there by the colored people to prevent the Ku Klux from getting them and breaking them up. Does that look as if he was conspiring against the rights of the colored people? Then, again, his reputation in that county for kindness and fair dealing towards the colored people was universally good; he was regarded by the colored people as their friend; that was his undisputed reputation. And how does he act? When Ross, the colored man, speaks to him about going to the election to vote, he does not attempt to prevent or dissuade him from voting the Radical ticket. Does he not say that if he voted, he would vote the Radical ticket? This is not the conduct of a member of a conspiracy, whose object was to prevent colored people from voting. The government may reply to this, that he was present at two meetings of the organization, and that therefore, he is guilty. I deny it; and I deny that that is the law. The true question for you to determine is, what was his intent in being there? Was he a part of this conspiracy? Was he aiding in it? Was he favoring it? Did he not rather go there solely for the purpose of protecting himself, and the hands in his employ?

Now, the mere fact of Mr. Miller being there proves nothing, he might have been there as a detective, on

the part of the government. His presence there would then not have been criminal, because his business would not have been criminal, and his intent would not have been to violate the first section of that act. Now, I contend that Mr. Miller might have been there, simply as a detective, with the simple object of protecting himself and the colored people in his employ. And there is much to confirm that. It will be your duty, gentlemen of the jury, to examine the whole evidence in this case. I know that I am addressing a jury, who, with the exception of the foreman, is of a different color from the prisoner, but in the name of all that is just, in the name of all that is due to humanity, in the name of that consciousness that we have of the presence of Him who witnesses the actions of every tribunal that claims to administer justice and enforce the law, based upon reason, equity and humanity, I ask you to dismiss all prejudices about race and color. We are creatures of the same God; we are all amenable to Him and to His laws, and I ask you now, upon your oaths, is there any incident in this whole case to confirm the position that Mr. Miller was not there simply with the intention of protecting himself and the colored men in his employ? Did he ever have a Ku Klux gown? No. Did he ever have a pistol? No. Did he ever go upon a raid? No. If he was a member of the organization and an active member, he was bound by the constitution to have a pistol and a gown to go upon its raids, and obey its orders. Is there any particle of proof that he did any of these things. The very witnesses put up by the government tell you distinctly that they never saw him on a raid, or in disguise, or that he had a pistol, or a signal instrument. All that they do is simply to prove his presence at a meeting on two occasions, at Sharon church.

Mr. Wilson here reviewed the testimony of the government witnesses, Elias Ramsey, John Ramsey and Charles W. Foster, whom he contended, merely proved the presence of Mr. Miller at two meetings of the Ku Klux organization, and did not prove that he had been sworn a member of the order, or even participated in any way in carrying out the purposes of the organization.

The first question, Mr. Wilson continued, for the jury to decide, was whether there was any criminal intent on the part of Mr. Miller, in going to those meetings of the Klan. Do you not feel, gentlemen, perfectly convinced that there was no criminal intent, or any intent to violate the law, under which he is indicted? And, if he went there simply to protect himself and his colored hands, what, I ask, has he to do with this long list of acts of violence, respecting which so much testimony has been offered, on the part of the government? Admitting that there have been acts of violence, he has nothing to do with them, and he is not guilty, according to the evidence, of any conspiracy to commit those acts.

And all this, gentlemen, should not be allowed to influence your minds against my client, for he is not responsible for acts with which he has nothing to do. Mr. Miller was at those meetings simply to disarm the hostility of the Ku Klux against him, and to ascertain, if possible, if they intended to harm him or the negroes in his employ. Why should all this testimony be offered in reference to the purposes of the organization? I suppose it is simply with the view of showing that there was a conspiracy to prevent the colored men from voting in 1872. Supposing it were so; I contend this had nothing to do with my client if he was not a member of that conspiracy and did not join it with a guilty intent. If he went to that meeting with an innocent intent, and if he did not go there to promote this conspiracy but to protect himself, then he ought not to be punished.

If you have any doubt as to his intention in going there, you certainly ought to give the prisoner the benefit of that doubt. If you cannot, the court must pronounce sentence. His fate, therefore, rests entirely upon you. He is at your mercy. I cannot see why he should be offered as a victim upon the altar. It certainly would be no sacrifice to justice. Suppose you convict him; suppose you entail an imprisonment of five years in some prison, to breathe its fetid atmosphere, which one of you gentlemen can point to a single word that has ever been uttered by this prisoner—which one of you can put your finger upon a single act that he has committed that would justify you in punishing him; and that would satisfy you that he should be subjected to a penalty of that sort! You are to look to the entire evidence, gentlemen; because, if you con-

vict, the court must punish. His fate is in your hands, and I again ask you—and look over the whole of the testimony and answer the question—are you satisfied in your hearts that this man was a Republican in his sympathies and his acts; that he was simply taking care of himself and of the negro hands in his employ, and that he had cause to fear the Ku Klux; that he was really opposed to the organization, and that his presence at those two meetings was simply an act of precaution and self defense—and I ask you, if you are not satisfied that that was his intent, and not to violate the first section of the act under which he is indicted? and I ask you to decide these questions after looking over all these questions, and not simply confining yourself to the one point proved by the Government, and the one position taken by the Government—that he was present on two occasions when this Ku Klux met.

I ask you, gentlemen, in conclusion, to dismiss from your mind any prejudice, if any such should exist, of race and color, and do justice to this man. The passions, the excitement, the strife and prejudices of this fleeting life are soon ended, and none of us should forget that we must account hereafter for all our actions here.

#### ARGUMENT BY MR. CORBIN.

The prisoner at the bar is charged with others of York county; that he did, unlawfully, conspire with intent to violate the first section of an act to enforce the rights of citizens of the United States to vote in the several States of this Union, May 31st, 1870.

[Mr. Corbin here read the indictment.] We first notice, gentlemen, that he is charged with being in a conspiracy for the purposes indicated in that act. The court will tell you that a conspiracy consists in the agreement, the entering into a combination, to do the unlawful thing; it does not consist in the doing, but simply in the agreement to do it. That charge has been heard over and over again in this court, and it is a proposition that does not admit of dispute. If you read the indictment carefully, you will see it does not charge him with anything except a combining and conspiring to do the unlawful thing. That is the offense, nothing more and nothing less. Such combination and such conspiracies are prohibited by law; and the only question, gentlemen, for you to enquire about in this case is, did this defendant enter into such an agreement and such a conspiracy?

How do we show, gentlemen, that he is a conspirator, and that he entered upon this conspiracy? In the first place, he put the members of his own Klan upon the stand, who aver that he attended the meeting of the Klan; that he was present and acted like the rest of the members and there is no proof to the contrary, and they do not attempt to deny it. Here, gentlemen, you have secret oath bound society or organization that does not permit any stranger to be present, to know their secrets, or permit any of its members to tell their secrets, under penalty of death. The rules of the organization are all alike, and all the Klans declare that any man who reveals any act of the order shall suffer death at the hands of his brethren. Now, gentlemen, this is the testimony of all the witnesses who have been put upon the stand. Even the witness for the defense, Mr. Carroll, says, "I could not go into the Klan without being a member of it, and I don't know anybody that could."

There cannot be, gentlemen, a particle of doubt, upon that question, when we see a man sitting an office and exercising the function of that office, we say at once that he is an officer; and if he acts as an officer his acts are valid so far as the public are concerned; though he may not in reality be an officer at all, he holds himself out to the world that he is an officer. Mr. Ramsey, Mr. Davis, Mr. Gunn, Mr. Foster and other members of the Klan, all say that nobody could go there who was not a member of the order; and Mr. Kirkpatrick says: I not only saw him there at one meeting, but I saw him at a second meeting. Can these be any doubt about his being a recognized member of the Klan, in full fellowship with them, and in full possession of all their secrets, with a full knowledge of their purposes and fully advised of all that they intended to do, and all that they were doing? Is this defendant holds himself out to that Klan as a member. Do you suppose, for one moment, that that band of conspirators who had been present at murders, who had gone on



midnight raids, who had again and again whipped colored people in York county till they did not dare to remain in their homes at night; do you suppose they would have permitted this man to be present if he had not assumed to be a member of the organization, and if he was not known to be a member?

Do you suppose, gentlemen, you or I could have been present at the meetings of that Klan without being members of it? We might have done it, gentlemen, but we would never have come back here again! And, this is true of the prisoner, John Miller; if he had been admitted to the meetings of that Klan, and it had been ascertained afterwards by anybody that he was not a member, would they not have "gone for him," in the expressive language of that county? Tell you they would; and there would have been no John Miller to try here to-day, if that had been the fact. The witnesses Ramsey and Fergusson, saw him at the meetings; four men of that Klan who were present, saw him on those occasions; two of them saw him there at different meetings; others saw him at one. Did he not hold himself out to the Klan, and to that neighborhood, that he was a member of that organization? He did and there is no denying the fact. Why do they not produce some witness to testify that they knew he was not a member? That he was allowed to go there as a sort of honorary member, or visitor? Because, gentlemen, it was not so; there are members of the Klan in this court, and there is no objection to their going upon the stand, to swear to that fact, if it were true. Why do they not do it? Because everybody knows it is not the truth. They know that John Miller could never have gone there had he not been known to be a member of the Ku Klux Klan. He was present at their meeting when officers of the Klan were elected; when a monarch, a Turk, and a committee were elected. Witnesses testify that though they did not see him vote, that the members separated into lines to vote for the respective candidates, and that they did not see any man stand on one side and not vote. No, gentlemen, he could not have taken part in these important operations of the Klan, had he not have been a member.

Again, if he was not a member, it is for him to show it. It is true, as my friend on the other side suggested, though barely possible, that he might have been there as a Government spy, to find out what the Klan was doing; but if so he would have been able to show that he was there for that purpose if he had been a detective. Watching to find out if they were going to raid on him or somebody else, he would have been co-operating with somebody, and he might have given information to the Government; but if so, why did he not tell me, or some representative of the Government, that we might have prosecuted so infamous a conspiracy? No, gentlemen, such a supposition is not for a moment to be entertained. If he had been there by accident; if he was there not to join in its proceedings, there would be some evidence of it. The burden of proof is upon him. When I see you, or anybody, operating with a band of murderers, operating with men guilty of all the crimes in the catalogue, meeting with others of the order night after night, what is the inevitable presumption? Why, that he is one of them; that he belongs to them; that he co-operates with them; that his sympathies are with them in their purposes; and that he takes part in the operations. No truer saying, gentlemen, ever passed into proverb than that, "A man is known by the company he keeps." This was the kind of company that John Miller kept; this is the kind of association John Miller selected.

Then, gentlemen, the witnesses tell you that he was present at a meeting, when the Klan went upon a raid; but the prisoner, having no disguise, went home. Was he not in the secrets of the order? Did he not know all about it? Would he have been permitted to have been at their meetings and to have known their secrets had he not been a sworn member? What did they kill Charley Good for? For the simple reason that he knew some of them who had whipped him. This shows that the Klan will do to any one who is supposed to know the members or the purposes of the order. They will kill him; and this is what they would have done to Miller had he not been a member of the order.

It seems to me, gentlemen, that the testimony is so overwhelming, that there cannot exist any doubt in your minds that he attended the meetings of the organization, and was cognizant of all their operations, and therefore guilty of the conspiracy with which he stands charged.

After a review of all the testimony in the case, Mr. Corbin said:

Gentlemen, I leave the case with you. I feel that further argument, or further reference to the testimony, is unnecessary. If you feel, gentlemen, as I feel when I have heard these awful tales of murder, rape, arson, that you can never forget them and can never banish them from your minds, either in your hours of sleep or in your hours of wakefulness, and the horrible tales that have been told us from that stand, in carrying out the purposes of that organization, is a reality far too terrible either to be forgiven or forgotten.

The court then charged the jury more briefly, but on the same grounds as on the preceding trials.

The jury then retired.

After the jury had retired, Mr. Corbin moved for sentence upon the prisoners who had been convicted or plead guilty. The court signified a willingness to pass sentence, and the District Attorney called the defendants in the United States vs. Allen Crosby et al.

Sherod Childers, Evans Murphy, Hezekiah Porter and William Montgomery arose for sentence, and their counsel (Mr. Hart for Evans J. Murphy and W. H. Montgomery, and Mr. Wilson for Childers and Porter,) offered affidavits in mitigation of sentence. They were passed up to the court.

While the court were engaged in reading the affidavits, the jury returned, and their verdict of guilty in the case of the United States vs. John S. Miller was recorded.

#### SENTENCE OF SHEROD CHILDERS.

Sherod Childers was then called for sentence, and interrogated by the court. The proceedings were as follows:

By Judge Bond.—Q. Childers what have you to say for yourself in mitigation of your punishment?

The prisoner did not reply.

Judge Bond. Where do you live? A. In York county.

Q. How old are you? A. Twenty-three years old.

Q. When did you first join the Ku Klux Klan? A. Joined at the election.

Q. Who was Chief of your Klan? A. Aleck Smith.

Q. How many raids have you been on? A. That one, sir.

Q. Which one? A. That one—that Amzi Rainey. I had to join. I voted the Radical ticket, and I had to join in that way.

Q. What did you do to this man Rainey? A. I didn't do anything to him at all.

Q. What was done to him? A. Nothing as I seen. I wasn't up to the house.

Q. Where did you start from to go there? A. I started from Bullock's Creek Bridge, but didn't start with the intention of going there at all. I don't think it was the intention of the crowd to go there.

Q. Whom did you meet at Bullock's Creek Bridge? A. Allen Crosby, Sylvanus Hemphill, Evans Murphy, Ki Porter, I think is all that I met there.

Q. How did you chance all to meet at the bridge that night? A. Van Hemphill brought me word to meet there.

Q. You met for the purpose of going on a raid

A. Not to go there we didn't.

Q. You met to go on some raid? A. We met to go on the raid, but not to go there.

Q. What raid were you going on? A. None in particular. We was just going out in the country that night. That is what he told me.

Q. What did you think they were going to do? A. I didn't know.

Q. You went to do anything that you were told to do? A. We were not told to do anything.

Q. What did you meet at the bridge for? A. They told me to meet the Klan there and I met.

Q. What were the Klan going to do? A. They didn't tell me.

Q. I want you to tell me now all about this thing? A. I am telling you the truth.

Q. You went to meet the Klan for no purpose whatever? A. Not as I heard of.

Q. What was the business of the Klan—were



you in disguise? A. No, sir; not when I went; I was in disguise after.

Q. What did you disguise yourself for? A. That was the rule of the order for men to disguise.

Q. What were they going to do? A. I didn't hear anything, sir, they was going to do them all.

Q. Then you met and put on disguises, and then you took them off and went home? A. No, sir; we didn't take them off.

Q. What purpose had you; were they going to do something wrong? A. None that I heard of; didn't hear we were going to do anything wrong.

Q. What purpose had you in disguising yourself? A. I can't tell.

Q. Did you go to Rainey's? A. I went to where Rainey lived, on the plantation.

Q. What was done to him? A. I was not at his house.

Q. Can you read and write? A. No, sir; I can't read and write.

Q. What do you follow for a living? A. Farming.

Q. Do you work for yours-elf? A. Yes, sir.

Q. Have you a family? A. Yes, sir.

Q. What family have you? A. I have my wife and one child.

Judge Bond. Children, in consideration of the fact that you have pleaded guilty, and shown to the court by that that you have a measure of repentance, the court will not be as severe as it would be otherwise. You have not told me the truth though, you were in the Big Billy Wilson raid too. The witnesses in the other cases have so stated. The judgment of the court in your case is that you be fined one hundred dollars and be imprisoned for the term of eighteen months. Sit down.

#### SENTENCE OF WILLIAM MONTGOMERY.

William Montgomery, one of the others who had pleaded guilty in the same case was then called.

By Judge Bond. Q. Where do you live? A. In York county.

Q. How old are you? A. I am going on nineteen.

Q. Can you read and write? A. I can read print but I can't write.

Q. Were you in the Confederate army? A. No, sir; I was in no army at all.

Q. What raids have you been on? A. Well, I was on the raid that they got me on—the Amzi Rainey.

Q. That the only raid? A. That is the only raid that ever I was in.

Q. When did you join the Klan? A. I joined it in February sometime.

Q. What did you do on this Rainey raid? A. I never done anything; I staid with the horses.

Q. All of you staid with the horses, didn't you? A. I staid with the horses.

Q. Who beat Rainey? A. Nobody, as I know of.

The Court inquired of the District Attorney whether he had any facts relating to the prisoner, saying, "I don't think we can get them out of him."

Mr. Corbin replied that he was not aware that the prisoner had been in any other raid, and added: "I would state to the Court that there were some eight or ten persons whipped that night. Amzi Rainey was the only person specified."

Q. Where did you go to from Amzi Rainey's? A. I went home.

Q. Didn't go with other expeditions the same night. A. No.

Q. Nothing was done to Rainey? A. Nothing, as I know of. I did at know where Rainey lived, nor anything about it.

Judge Bond. Montgomery, the judgment of the Court, in your case, is that you be fined one hundred dollars and be imprisoned for eighteen months.

#### SENTENCE OF EVANS MURPHY.

Evans Murphy was called next.

By Judge Bond.—Q. What have you to say to the

court in mitigation of your punishment? A. I don't know as I can say anything.

Q. Where do you live? A. In York county.

Q. What is your business? A. Farming.

Q. Do you farm for yourself? A. Yes, sir.

Q. What family have you? A. I have seven besides myself.

Q. How many children? A. I have four children and sisters-in-law.

Q. How many raids have you been on? A. Never been on but that one.

Q. How many people were whipped that night? A. I don't know e'r-a one; I never saw e'r-a one whipped at all.

Q. You held horses? A. No, sir; I didn't hold any horses.

Q. What did you do? A. I didn't do anything myself, nor I didn't see anything done; I never saw anybody struck that night; I don't think there was e'r-a lick struck; if there was, I wasn't in it.

Q. How many of you were there that night? A. There were nine.

Q. How many horses can one man hold on a raid? A. One man held them all that night.

Q. What did the rest do? A. I don't know what they all done; I didn't do anything myself.

Q. Do you know anybody that did, do anything? A. No sir, I did not, I was not with them; some say that the party went to Rainey's. I was not there.

Q. Did they go anywhere else? A. No sir; we went from Rainey's back home. I have never been at the house. I didn't know where Rainey lives, myself. I don't know where his house is.

Q. Did they tell you anything about it, when they came back? A. No sir, they never said they had done anything. They run off and left me, and several others, Mr. Kirkpatrick and James Pursely and Allen Crosby, and I think Childers and Porter. They all got off and left us. We didn't know anything about where they went.

Q. Whom did they leave? A. Me, and Childers and Allen Crosby and Kirkpatrick and James Pursely and Porter.

Q. It turns out those who happen to be indicted didn't do anything, and all those that haven't been caught, did the whipping? A. If there was any whipping done I didn't know it, nor I heard of none being done.

Q. What did you go there for? A. I can't tell, I didn't hear anything; I didn't know they were there.

Q. What did you go there for? A. I didn't know they were going there.

Q. What did you go for? A. I was going home from work and met up with them and they asked me to go along; said they was going to ride around a piece that night; didn't say for what purpose, nor I didn't ask them.

Q. You didn't want to know, I suppose; what did you go back for? A. To go home.

Q. Had you ridden far enough? A. I suppose so; the crowd turned back and I had to.

Q. Had a pleasant ride in the evening and then returned? A. I don't know whether it was very pleasant or not, we returned home.

Mr. Hart. I think your honor misunderstood the prisoner about the parties whom he names as being present: as being only those indicted in this case who are absent; I understood him to say that Allen Crosby, himself, Porter and Childers, were those that were left behind. Montgomery is indicted and here—

Judge Bond. Montgomery only held the horses, though.

Q. Can you read and write? Not much, a little.

Q. What is your name? A. Evans Murphy.

Judge Bond. The judgment of the court is in your case, that you be fined one hundred dollars, and be imprisoned for eighteen months.

## SENTENCE OF REZEKIAH PORTER.

Rezekiah Porter was next called for sentence.

*By Judge Bond.*—Q. Where do you live? A. In York county, sir.

Q. How old are you? A. I am nineteen years old.

Q. How many raids have you been on? A. One, sir.

Q. What raid was that? A. On Rainey.

Q. What was done to Rainey? A. Not anything that I know.

Q. What was done that night? A. I don't know, sir, as there was anything done.

Q. Where did you meet the raiding party? A. I met with them down there at Bullock's creek bridge.

Q. What did you go there for? A. I was warned to go there.

Q. By whom? A. Sylvanus Hemphill.

Q. Who was Chief of your Klan? A. Aleck Smith.

Q. Who was Chief in your county. A. I don't know, sir.

Q. When you got to the bridge what did you do? A. We disguised and went off on across the bridge; I reckon they went to Rainey's.

Q. What did you do when you got to Rainey's? A. I didn't go there.

Q. How far did you go? A. I went down to the bridge, and then across the branch up in the old field.

Q. What for? A. We were hunting for the other fellows; they went off and left us.

Q. Anybody else whipped that night? A. No, sir not that I know of.

*Judge Bond.* From the fact that you have pleaded guilty, the judgment of the Court is that you be fined one hundred dollars and imprisoned eighteen months.

## SENTENCE OF ROBERT HAYES MITCHELL.

Mr. Corbin. Will the Court take up the case of Robert Hayes Mitchell? He is in court.

Mr. Hart. Your Honors will recollect that was the case in which a motion was filed yesterday in arrest of judgment and for a new trial.

*Judge Bond.* The Court will overrule the motion for a new trial and in arrest of judgment.

The prisoner arose.

*By Judge Bond.*—Q. What have you to say for yourself why the Court should be lenient towards you? A. Well, sir, I don't know what I ought to say.

Q. Say everything you think. A. Well, I might say right smart, and then it mightn't be much benefit. I don't know whether I can say anything to be of any benefit. I never was arrested. I went up to York and gave myself up to Major Merrill, and told him all I knew, except some things he didn't ask me and didn't give me time to tell him; but he sent me to jail. I came down here with the intention of pleading guilty, and my lawyer kept me from it, and said not to plead guilty; said it was best for me not to do it. That was the reason I didn't plead guilty. I wasn't guilty of the charge, although I was guilty of being on the raid; but I didn't do anything. That was proven here, that I didn't do anything to any one that night.

Q. You kept the horses? A. I was with the horses; I don't know that I held any horses but my own.

Q. Who was chief of your Klan? A. Well Chambers Brown was once chief; Robert Riggings was elected after this chief.

Q. How many members of your Klan were there? A. I don't know, sir, exactly, it was a pretty strong Klan, seventeen or eighteen men I think perhaps.

Q. What proportion of the white people in that section do you think were members of Klans? A. I don't know; I can't say positively.

Q. Give us your idea? A. Well there is a good many. Q. How many raids did you go on? A. I was on that raid, and on another little raid that we went to Charley Russell's house atquire Sam Brown's, and atone meeting at Sharon, when we elected chief; I never was on a raid in my life until the night we went to McConnelville—the night Rainey was hung.

Q. Had you heard that those raids had taken place before you joined the order? A. No, sir; I joined the order in 1898, and I never had been on a raid in my life

and didn't know who else did belong until the night that we went to McConnelville.

Q. I don't think you understood me; had there been any raids before you joined? A. No, sir; there had never been raids.

Q. How soon after you joined did they begin? A. Well, sir, I don't know; it was some time; I don't think there was any raiding done to my knowledge after I joined until this last year; a while before this Christmas a year ago, I think, was the first; might have been in October or November—I don't remember exactly the time.

Q. Did these people you raided upon have any sort of trial in the Klan? A. No, sir, they did not; I didn't know a thing about it until Sunday evening; the man was hung on Monday, and I never heard his name before in my life; I didn't know anything about it at all.

Q. Didn't you think it very remarkable that a parcel of men could be got together to go and hang a man, you never heard of before? A. I suppose there was men that did know the negro; I didn't though.

Q. Had you determined that somebody was to be whipped? A. never heard that anybody was to be whipped.

Q. There were people whipped frequently? A. There might have been.

Q. I want to know who determined the fact that A. or B. should have a whipping? A. I am not able to say that, I suppose the Klan gave the orders.

Q. From the commander? A. I don't know that.

Q. There was no committee to determine it? A. Yes, sir; there was a committee. We elected a committee.

There was never nothing done after that. We had a meeting and elected a Chief. There was a committee to attend to such things. I didn't know there was any whipping mentioned in it; there was none done after that, at any rate.

Q. What is your business? A. Farmer, sir.

Q. Farm for yourself? A. Yes, sir; I have been the last two years.

*Judge Bryan.* Mr. Mitchell, it has been your unhappiness to have been connected with a great crime; and if the court could believe that you were a party to that crime—that you had suspected the terrible deed that was to be done—and had any intimation that you had countenanced it, they would exhaust the full penalty of the law, and then it would consider that you had been very mercifully dealt with. But you have come in and confessed, and your manner has impressed the court that, although you had been so misguided as to join a body of men to punish people, and punish them without responsibility to the law, yet we feel at liberty to believe that you have dealt candidly with the court and that you have told the truth; and it is upon that conviction alone that the court finds its vindication for accepting your declarations and believing that you were in no way a party to it. The sentence of the court is that you be imprisoned eighteen months and fined one hundred dollars.

CASE OF SAMUEL G. BROWN.

Mr. Corbin. Will the Court pass sentence in the case of Samuel G. Brown?

Mr. Wilson. In his case, if the Court please, I desire to submit some affidavits which I have not had time to prepare. If it meets with the pleasure of the Court, we would prefer to have time to prepare them.

*Judge Bond.* He may make his statements.

Samuel G. Brown arose.

*By Judge Bond.*—Q. What have you to say in mitigation of your sentence? A. I should have liked to have got some affidavits to show my position, and why I met the Klan on that occasion. That is the only connection that ever I have had with the Ku Klux organization, attending one meeting of the Klan. I should have liked to have an opportunity of getting up affidavits to show why I met the Klan on that occasion.

*Judge Bond.* Do you propose to make to the Court a candid statement of all your connection with this Klan, and all the other people in your community who had connection with it; we have no objection of your having until to-morrow to do it; and we want to know, not only your connection with it, but of every other person in your position in life in York county, who belonged; and if you propose to do it we will allow you time. But if you only mean to make a statement of your innocence—

Prisoner. I can only state what I do know.

*Judge Bond.* You may have until to-morrow to do it.

SENTENCE OF JOHN W. MITCHELL.

John W. Mitchell was next called, the motions

for a new trial and an arrest of judgment having been withdrawn.

*By Judge Bond.*—Q. What have you to say in mitigation of your punishment? A. Well, I don't know hardly what to say; if I was educated, so as to explain myself, I would be glad to do so, but as I have but a poor education, I don't know how to express my desires; I don't deny I belonged to the organization, and never have since I attached myself with it; when I was threatened beforehand, I thought that, for to save myself, I better get into it, and on the 25th or 26th of December last I joined the organization, betwixt Christmas and New Year's; the day that I joined they appointed me chief; they said they wanted a man that was sober and discreet, so as to not allow anything to be done out of the way, and I accepted the office as chief in my neighborhood; I never have issued an order to them at no time; was with the Klan on two raids that was started to be made, but prevented them from going; I didn't let them go; the raid I am accused of being on down by my house, I wasn't there; I think I showed to the court satisfactorily that I was not there; the evidence that I produced in court, and it is not worth while for me to state anything about that matter, because I know nothing about it; I remained in the order till the 25th of February, and I left it, and hadn't anything to do with it after the 25th of February; I had a disguise, and on Monday morning, the 26th, I burned it up; I told my wife, she had advised me to quit it; she didn't think there would be anything to it. I told her I would take her advice, and leave it and have nothing more to do with it. I would be glad for the court to be as lenient as possible, as I have a wife and seven children—my largest you saw here on the stand. I have a son that is married, that I do not consider as my family at all at present, and I have an afflicted mother that me and my son is the only support that she has. My next two largest children are daughters. The raid that they were going to make on Wm. Kell, I heard of, I didn't order the Klan out. I heard that they were going to make a raid—I think that was Monday night. I heard it Monday about 12 o'clock, and I went to the meeting place and begged them to not go, that it was not right to do so, and if Mr. Kell had been able to give in his evidence here, he would have showed the court that there wasn't any harsh words, or hard feelings betwixt him and me that night; that is Mr. Hugh Kell. It was spoken of by some of the party, I don't remember who, that they thought it would be well for Mr. Foster and Mr. Hugh Kell and Mr. Wm. Kell, all to be killed, and I opposed it. I told them it wouldn't do to take the life of any one. I opposed any such means whatever, and Mr. Foster told me himself that he would have been glad to have gone on and got sight of Mr. Kell, if he had, he would have killed him. I told him that was wrong; he oughtn't to do that. And then on the York raid, I heard that when I was about nine miles from home, going to church, I turned around and goes back home, thinking that the man who had been put in charge instead of me, would order out the Klan, and I went back home to propose if it was ordered out to go and stop that raid.

Mr. Melton. Who was that man? A. Chesterfield McKinney. When I got to where they met, they was just coming out onto the big road. As I rode up, I went on talking to one and another until we got down to the mill, and I persuaded them to make a halt—which they did, and I talked to them and tried to convince them that they was wrong, and after awhile there was two other small Klans came up and asked what we was doing there. I just replied that I did not think that any body had any business in Yorkville that night; and I told them as for myself, I am going back home. The rest of you can do as you please. I have been talking to you, and if you are not willing to take my advice, go your length. I got on my horse and turned round—and I was branded

with cowardice. I heard the next day, from a young man of the party, that they had threatened me for not going on to Yorkville, and I got him, myself and my son, and was prepared for a week or ten days afterwards for to meet them, provided they came on me.

Mr. Melton. Who was the young man who gave you that intelligence? A. Mr. John Wallace.

Mr. Corbin. Will the court allow me to ask one question?

By Mr. Corbin.—Didn't you advise your Klan not to go on that raid because you didn't receive expected orders from Mr. Avery, the chief of the county? A. No, sir; I didn't.

Q. Wasn't that statement made at Herndon Mill? A. Yes, sir; that statement was made there.

Q. That statement was made, that the Klan had not received orders as expected, and hence they ought to go home? A. I told them that I would like for them to show the order; there was no order produced, and I turned round and went back home.

Q. What was the understanding that night? A. There was no understanding at all; only that they were to make a raid on Yorkville.

Judge Bond. It appears to the court from the testimony that has been taken in this case, that you were a very prominent man in that neighborhood and all these young men and ignorant people had a right to look up to you for direction, and then you were a chief of a Klan, and from you all the orders came; you were a man of property and position; you had an opportunity to know the transactions that were going on because you were a chief; you had better means of information than those men had, who were always accustomed to follow the prominent people in their particular section of country. Knowing all this, hearing of the ravishing, murders and whipping going on in York county; you never took any pains to inform any body; you never went to the civil authorities, and you remained a chief till they elected somebody else.

The Prisoner. I was afraid to do that, for fear of my own life.

Judge Bond, continuing. You were afraid of your own life from the very institution you set on foot. You have appealed for mercy on account of your family, and it is proper that you should appeal to the court on that ground. But you never thought of the families of these other people. Men were taken out and murdered within sight of their wives, and men were scourged and their wives scourged by this infamous organization, of which you were a chief. The judgment of the court in your case is that you be fined one thousand dollars and that you be imprisoned for five years.

#### SENTENCE OF THOMAS B. WHITESIDES.

Thomas B. Whitesides was next called up. The motions for a new trial, and in arrest of judgment having, as in the preceding cases, been withdrawn.

By Judge Bond. Q. What have you to say to the court? A. I have not got anything. What I could say has been proven to you; I cannot say anything more; I can say that I did not belong to the order, and never did—and was always opposed to it.

Mr. Wilson, *sotto voce*. State about that Chas. Leach raid.

The prisoner. I wasn't on it. I was at John W. Mitchell's the night this raid was charged against me.

Judge Bond. That has been found otherwise by the jury. The court has got the impression that you were not prominent in this matter. It has never been shown that you took a part in any of these raids, and any participation that you had, it appears was not active. A man of your position in that county, having a knowledge of these facts, might have communicated them to the authorities.

The Prisoner. I couldn't do any more, sir, than what I did do.

Judge Bond. You might have had some of these people punished; this extraordinary act of Congress, under which jurisdiction has been given to the United States Courts to punish these things, would have been perfectly useless, if gentlemen, in your position in York county, having found out what was going on, had united to put it down. It seems that the people preferred to live in amongst this outrageous Klan, rather than under the government of law. Seeing the little comprehension which appears from the evidence that you had with it, the judgment of the court is that you be fined \$100, and be imprisoned one year.

## SENTENCE OF JOHN S. MILLER.

John S. Miller was the next prisoner called.

By Judge Bond. Q. What have you to say? A. I have not anything to say; only I say the first thing I am going to state to you, I am going to tell you how I came to be at the Sharon meeting house. A cousin came to my house and told me to come and go along with him. And when we went there, he told me there was something powerful to be done, and I asked him what it was; he said there had been a man divulging some secrets, and they was talking about shooting him. And I told him I didn't want to go in any such a concern as that. He said come and go along, and he told me if they asked who comes there, to say a friend. Well, we went, and they never said anything like that at all. I hitched my horse and went in and spoke to them, and never let on but what I was a member of the Klan. They said that Andy Kirkpatrick had been telling some tales to Dan Carroll, and they commenced talking about shooting him, and Squire Sam Brown I think was there, and he got up and so did I, and told them that such a thing as that oughtn't to do any such a thing, because there was Andy, and no person to depend on but his old mother for a living, and they concluded that it wouldn't do. That may be, Dan Carroll was telling a lie. When I saw Dan Carroll I told him, "you best get in the order," for they said about your being a Radical anyhow, and it is best for you to go and get into that thing; and I told him it would be best to know something about it, for we wouldn't be obliged to go on a raid and they wouldn't hurt our hands. When I went there the next night it was in the session house, and when I went in I told them about having Dan Carroll with me, and they commenced cursing and said I oughtn't to have brought him there. And I said Dan is a good fellow and there is no danger of him telling anything, and he went in the house, and they knelt him down and swore him in, but I never was sworn in, and I told Major Merrill them very things the first time I ever went up to him.

Q. What do you mean by joining to keep them from running your hands? A. Well, I didn't mean I joined it; I told him just what I tell you, but I didn't join it at all.

Q. How did they run your hands off? A. They had been to my house once before that, and there was a colored man with me—a Captain on the road; and they came there once; and they came there and hollered for me and him, and we slipped out in another room, and it wasn't a week before they came there again, but he never told that this morning.

Q. How what hands off? A. The hands that was working with me.

Q. What did they want to run them away for? A. I don't know anything about what the object was; I reckon because they had been voting the Radical ticket. They went to all the white people that was Radicals and done something. I always was opposed to that thing, but I know'd they didn't believe me. There was a mighty heap that got away, and I knew when I didn't do anything I didn't want to go away.

Q. Why didn't you inform on these people? A. Who would you want to in that country? There wasn't a man what was Radical but what had his card in the paper. Now, who would I want to?

Q. Who is the Judge in that country? A. I forget his name, but he wasn't up there. Thomas is the Judge up there.

Q. Why didn't you go to him? A. What was the reason why I didn't go to him? He might have been there, but I never had any dealings in court at all.

Q. Has nobody in that county been punished for these things. A. Not as I know of.

Q. Why didn't you go to some Trial Justice? A. There was no Trial Justice.

Q. How many of the white people belong to this thing? A. Every one that I have heard say anything of it was obliged to belong to it.

Q. When you met at Sharon did you meet in the church? A. The first time we met in the yard, and the next in the session house.

Q. What is the denomination of the church? A. It is Seceders.

Judge Bond. The court is of opinion that you are the least guilty of the parties brought here. They will fine you \$20, and imprisonment for three months.

## SENTENCE OF THE FOUR SHEARER BOYS.

Sylvanus Shearer, William Shearer, Hugh H. Shearer and James B. Shearer withdrew their pleas of not guilty, and entered a plea of guilty.

By Judge Bond [to Wm. Shearer].—Q. What have you to say to the court in mitigation of your punishment? A. I would like that you would be as easy on me as possible.

Q. For what reason? A. Because I didn't know anything about this thing that night.

Q. How came you to be present? A. Chambers Brown sent me word to meet him that night.

Q. You were not members? A. No, sir; but he wanted to take us in.

Q. What did you let him take you in for? A. Well, everybody else was in, almost, and I didn't exactly feel safe without I belonged to it.

Q. What do you do for a living? A. Farm.

Q. Sylvanus Shearer, what have you to say for yourself? A. I want you to be as light as possible.

Q. What punishment do you think out to be meted out to a man that would go to thrash half a dozen black people in one night for nothing. A. I don't know; it ought to be right smart to them that done it.

Q. You helped? A. No, sir.

Q. You gave them your countenance. What do you think ought to be done to a man that would come to your house and take you out of your house at night and hang you? A. Well, I don't know what.

Q. What sort of an excuse do you think it would be for somebody who went along with them, to hold the horses—didn't actually put the rope around his neck? A. I don't know as there ought to be any thing done with him.

Q. Can you read and write? A. No, sir.

Q. Were you in the army? A. No, sir.

Q. Was your brother in the army? A. Yes, sir.

Q. (to William) What was the parole you took? A. I didn't recollect, now.

Q. You have forgotten it already? A. Yes, sir. I was too glad to get out of it.

Q. You promised not to take up arms or resist the laws of the United States? A. Yes, sir.

Q. Your forgot your parole? A. Yes, sir; that is so, but a man can be scared to forget a good many things sometimes.

Q. (to James.) How many raids have you been on? A. I have been on the Jim Williams raid, and the one on Squire Sam Brown.

Judge Bond. The judgment of the court in each of your cases is that you be fined \$100 and be imprisoned for eighteen months.

The prisoners were returned to the custody of the Marshal, and the court adjourned until Friday, at 11 A. M.

## TWENTY-THIRD DAY'S PROCEEDINGS, DECEMBER 29.

The court met pursuant to adjournment. Hon. H. L. Bond, presiding; Hon. G. S. Bryan, Associate Judge.

Mr. Corbin said there were four prisoners who were ready to enter their plea of guilty.

The first called was

HENRY C. WARLICK.

In reply to interrogatories by his Honor, Judge Bond, the accused said:

The only raids I was ever on was that on Jim Williams and another; I live in York county, and work on a farm; I am twenty-two years old; I joined the Ku Klux Klan last

spring; it was the Pilot's Klan. When I went on the Jim Williams raid, I started from Robert Riggins' with him and Bob Shearer; I did not see the hanging; when the party dismounted and the horses were hitched up, I stayed with the horses; I did not see any whipping at all. I could not tell how many there were in the party; some of them had disguises; I had on only a false face; I do not know any of the superior officers of the Klan.

Judge Bond. The judgment of the court in your case is, that you be fined \$100, and that you be imprisoned eighteen months.

MILUS CARROLL.

was next called. On being asked what he had to say in mitigation of the crime with which he stood charged, in reply to questions of the court, he said:

I have very little to say; I acknowledge being on that Jim Williams raid; I never was sworn in till that—12 o'clock that day; I was told to meet the Klan at Briar Patch; I did not know till I got there what was their purpose; I understood after getting there, that they were going to McConnellsville after some guns; I did not see Jim Williams hung; I was with the horses; I suppose there were thirty to thirty-five people on that raid; the horses were hitched up, but I could not tell how many stayed with them; I did not see or hear of any being whipped that night, and I don't know who were the men who hung Jim Williams; some of the men were disguised; I had a piece of cloth over my face; the Klan I belonged to was said to be Chambers Brown's Klan.

Judge Bond. The judgment of the court in your case is that you be fined \$100 and be imprisoned eighteen months.

ELI ROSS STEWART

Was next called.

In mitigation of his crime, he said:

I was on one raid; I joined the Klan called Brown's Klan, between the middle and the latter part of last February; Chambers Brown told me to meet at the Briar Patch the night of the Jim Williams raid; there were about thirty to thirty-five on the raid, I suppose; and I understood their object to be to go down to McConnellsville for some guns; I did not go to Jim Williams' house; I stayed with the horses after the others dismounted; I don't know the names of any that went to the house, and I don't know the chief of the Klan.

Judge Bond pronounced sentence—eighteen months' imprisonment and a fine of \$100.

JOSIAH MARTIN,

The next prisoner called, said:

I was on one raid; Mr. Avery swore me into the Klan; I was upon the Jim Williams raid, but that was the only one I was ever on; Napoleon Miller told me I would have to go on that raid; I don't know what authority he had for telling me I would have to go; he told me to meet them at the Briar Patch; when the party got off their horses I did not go with them to Jim Williams' house; I staid with the horses.

Judge Bond. The sentence of the court in your case will be a fine of \$100 and eighteen months' imprisonment.

The case of Squire Samuel G. Brown was next called. He was asked, by the court what he had to say in mitigation of the punishment for his crime.

S. G. Brown. I have submitted some affidavits to the court, and I wish to say, in reference to the constitution and the by-laws that have been before the court, that they came into my possession in 1868 or 1869. In a conversation I had with Mr. Albertus Hope, he told me that he had them; and, on my expressing a wish to see them, he gave them to me. Whether this paper that has been read before the court is the same or not, I do not pretend to say whether it is or not. I never read it and never knew the contents of the paper till I heard it read here. I put the paper away and thought no more of it, and my impression was that I had destroyed it.

Judge Bond. Who is the Chief in your county? A. I do not know of my own knowledge. I have heard that the Chief was Major Avery.

Judge Bond. Who is Chief of the State? A. I don't think I ever heard.

Judge Bond. I have your affidavit. It appears, from the evidence given on the stand by several witnesses, that you were not only a member of this conspiracy, but that you took a prominent part in it. You are a man advanced in years, and those who were young and ignorant had a right to look to you for direction and advice. Either at the time these raids were going on or previously, I understand, you occupied some judicial position in your county. The State had armed you with a part of its power, but, so far from exercising your power and ability in the direction of peace, law and order, you brought your influence—

S. G. Brown (interrupting.) Allow me to say, sir, I have not held the position of Magistrate since, I think, '67 or '68. I have never been a Trial Justice.

Judge Bond. The condition of those who were the victims of this conspiracy was hopeless. A man who had been appointed to protect the innocent and the helpless, was untrue to his trust in giving them no protection. You stated in your affidavit that on one occasion, you prevented a raid on some one whom the Klan thought should be raided on. The court will give you the benefit of this one instance of a return to manhood; that human heart would indeed be hard which could hear of bloodshed and violence, and take no part in the endeavor to suppress it.

The judgment of the court in your case is, that you be fined \$1,000, and imprisoned for five years. [Mr. Brown I was about to make some further explanation, when Judge Bond said: You evidently don't propose to tell all you know, and I don't therefore, propose to hear further.]

Judge Bond. It has come to the hearing of the court from several witnesses who have been

summoned, that parties residing in York county have made threats of punishing them when they return. It is our desire that the government should use all its power, and the court will aid, if it should have to stay here all the winter, to find any of those in York county who have threatened these witnesses, and we would punish them as the law requires.

Mr. Corbin. I have recently learned of those threats, and I will use all the power under my control to ascertain who they are, and to bring them before the court.

#### CASE OF EDWARD T. AVERY.

The case of Edward T. Avery and others was then called.

Mr. Wilson. We propose to sever.

Mr. Corbin. We propose, then, to try them separately.

The following were then sworn in as jurors:

E. Johnson (colored,) Wm. Smith (colored,) Gabriel Cooper (colored,) Wm. F. Dover (colored,) Josiah Mannerling (colored,) Peter B. Glass (white,) W. H. Jackson (white,) Philip H. Salters (colored,) Andrew W. Curtis (colored,) William Reed (white,) John W. Gordon (colored,) Edward Reed (colored.) Mr. Peter B. Glass was appointed foreman of the jury.

The prisoner was then arraigned upon an indictment containing four counts, alleging interference with the right of voting of Samuel Sturges, and for threats to injure, oppress, and intimidate the said Sturges.

Mr. Corbin said: We intend to prove in this case the charges alleged in the indictment. We shall first show that Dr. Avery, the defendant, was a member of the Ku Klux order in 1868. We shall show you the nature and character of the Klan at that time; we shall then show you what the Klan has become since, and what it was last winter. We shall show you that Dr. Avery was seen on several occasions with the Klan when visiting colored people and whipping and outraging them in various ways.

This will be the scope of the testimony, and we shall farther show you that this Klan not only whipped and outraged colored men, who were voters, in various ways, but that they went so far as to kill them. We shall show that in this case it was done.

#### TESTIMONY OF OSMOND GUNTORPE,

Witness for the prosecution:

I reside in York county, and have lived there since 1868; I live on the Catawba river, near Dr. Avery's; I have known him since the latter part of 1867; I was initiated in the Ku Klux Klan by Dr. Avery, and sworn in by him; I remember a portion of the oath I took; it was to oppose and reject the principles of the Radical party; we were to protect widows and orphans and female friends, and the penalty for divulging any of the secrets of the order was death.

Mr. Corbin here read the oath from the constitution and by-laws of the organization.

Witness continued: As far as I recollect, that was the oath I took; the organization was represented to me to be for self protection, but when I was in it I found it to be a political organization, in the interest of the Democratic party; I afterwards left it; I joined in August, and left it in November; I understood from McCatheart, a member of the organization, that their purpose was to control the election at Rock Hill; he said that the order had agreed to go there and crowd the boxes, and prevent as many Radicals as possible from voting; Dr. Avery, I understood, was chief at that time; I got my dismissal from the Klan from Dr. Avery; I told him I was not satisfied with it; I was sworn into the Klan in the woods at night, and there were some fifteen men present; I was blindfolded and got upon my knees, and when the bandage was removed from my eyes there were a number of men pointing at me with their pistols.

The witness here described the signs, passwords and grip of the order, which have already been detailed by previous witnesses.

Each member of the order was required to have a pistol and a Ku Klux gown; the object of the gown was to disguise the person; it covered the whole body down to the feet; they had a kind of cap for the head that hung down over the face, making a false face; the night I was initiated some of them had their disguises on; Dr. Avery had his on.

*Cross Examination.*—I joined the order for self-protection; there were rumors in the county, and fears that the negroes would rise; I don't know anything about the negroes being armed; I heard there was a Union League at Rock Hill, and I heard that there were threats from the negroes, but I don't know anything positive; I cannot say that I was afraid, but I thought that as almost every other person was going into the Ku Klux organization that it might be best for me to do so; after I left the Klan, I went to live thirty-four or thirty-five miles away; I never heard anything about Night-hawks in the organization, or about a Monarch or a Turk, or a Magi; there was a Cyclops and a Scribe in the Klan, those were the only officers I knew of; I heard from Mr. Catheart that their intention was to interfere at elections; I only returned to York county once, and that was in the Christmas of 1869, and I did not see any of the members of the Klan then; I don't know that the Klan conspired to injure anybody in 1868, nor do I know of their trying to intimidate voters of my own knowledge; I don't remember anything about Radical rule being spoken of as one of the reasons for the organization of the Klan; its purposes as I understood it, was to oppose and reject the principles of the Radical party; I don't know about the organization since I left it.

*By Mr. Corbin.*—Mr. Catheart told me that the Klan had had a meeting and had agreed to go to the polls to crowd off Radical voters.

## TESTIMONY OF LAWSON B. DAVIS.

Witness for the prosecution :

I reside in York county, and have lived there two years; I was initiated as a member of the Ku Klux Klan; I took the oath at my own house; three persons were initiated at the same time. I attended one meeting and heard the constitution and by-laws; that was in last January. The contents of the oath, as near as I can remember, were that female friends, widows and orphans, were to be objects of our protection, and that we were to support the constitution as it was bequeathed to us by our forefathers; and there was to be opposition to the 13th, 14th and 15th amendments; the 14th was particularly specified in the oath I took. The oath was repeated, and I repeated it after them. There was no written document present; the penalty for divulging its secrets was death.

The constitution and by-laws were here handed to the witness by Mr. Corbin.

The witness continued: That is the same oath that I took, except the second section, which, as repeated to me, was "opposition to the 13th, 14th and 15th amendments." The organization, when I joined it, was called the Invisible Empire of the South. After I joined I found it was the same as the Ku Klux organization; when I found that I determined to leave them. The first meeting I attended there were eight or ten persons sworn in, and a proposition was brought forward to make a raid upon such and such persons. I inquired the reason, and they said they were prominently connected with the Union League. Their object was to threaten and intimidate people who held Radical principles. Their object was to discountenance people from joining the League. I heard this from the members. They said that those who belonged to the League were to be visited and warned; that they must discontinue their connection with the League; if they did not on the second visit, they were to leave the country; and if they didn't leave they were to be whipped; and if after this they did not leave, they were to be killed; I know this was how the purposes of the order were to be carried out; I have known of instances of raiding for guns; they made one raid upon Jerry Adams; Charley Byers told me they had whipped him; he was to be chief of the Klan; he said they had scared the boy very badly; they had fired several guns at him, but didn't mean to hit him; the only charge I ever heard against Jerry Adams was that he was a Radical; he was a Republican and a colored man; Charley Good, who was whipped very badly by the Klan, came to my house two or three days afterwards; he was a blacksmith, and a very good workman; the best in that part; Charley Good was whipped so badly that he could not follow his trade for several days; two or three weeks after that he was killed.

Wesley Smith, and William Smith, and William White, were among those who killed Charley Good; Smith said he was a member of Smarr's Klan, and some members of that Klan

assisted in putting Charley Good's body out of the way: the two Smiths, I know, were members of the Klan; Charley Good was killed because he was a Republican; he told me, in the presence of some other persons, that he knew who had whipped him; I told him it would be better for him to keep that to himself; Wesley Smith gave, as the reason for killing him, that Charley Good knew some of the party who had whipped him; I was ordered to assist in disposing of the body of Charley Good; I did not, till then, know that he was missing; they came and summoned me and Mr. Howard to go and secrete the body, which was lying near to where he was murdered.

Wesley Smith said that all who were members of the organization were required to assist, so that they might be connected with it and that the matter might not get out. I told him that I did not want to go, but he said that all the members had to go. We were ordered to meet at the gate about a quarter of a mile from his house. I left about nine o'clock and went up to Mr. Howard's, and Wesley Smith had given him the same instructions. He did not feel willing to go, and I said those were my feelings exactly. We waited until the hour had passed, and then when we left we met some ten or fifteen of the party. It was a dark night, and I only recognized Thomas L. Berry, Pinckney Caldwell, Wesley Smith and Madison Smarr. He is said to be the Chief of the Klan. Madison Smarr said I had escaped a scourging. He said the body was very heavy to carry. And Pinckney Caldwell told me that "Charley Good is now at the bottom of the river. The body would not sink, and I jumped in upon him," he said, "and fastened him there, as well as I could, with a stake."

Charley Good was at one time a member of a militia company, and, being told it was not to his interest, he left it and returned his gun. He was regarded as a man of Republican principles and was considered a person of some influence in that neighborhood. I never heard him charged with being a member of the Union League.

At the close of Lawson B. Davis' examination, Mr. Wilson said:

As Dr. Avery utterly disclaims and denies any connection with any of these Ku Klux Klans, by whatever name known, in '70 and '71, we deem it wholly unnecessary to cross-examine the witness.

## TESTIMONY OF KIRKLAND L. GUNN,

Witness for the prosecution :

I reside in York county, and have been a member of the Ku Klux Klan; I joined it in January, 1871; it was John Mitchell's Klan. Wesley Smith swore me in. The oath that was administered to me bound us to oppose and reject the principles of the Radical party, and the penalty for disclosing its secrets was death.

The oath of the Ku Klux constitution was then read by Mr. Corbin.

That was the same oath that I took, and it was proposed to be carried out by whipping



and killing the members of the Radical party; opposition to the Radical party was, as I understood, the chief purpose of the organization; I was present at two meetings, but never went on a raid; the first was a meeting of John Mitchell's Klan, to make a raid upon Bill Kell, because he was President of the Union League; they were going to kill him, but a brother of his, Hugh Kell, came into the crowd, and because he was there they thought he was sent as a detective, and they stopped the raid because of his being there; there was a considerable crowd; about thirty-five people were there; they were armed with guns, and had long gowns on that came nearly to their feet; I could not tell what color they were, for it was dark; they also had false faces, with places for their eyes, nose and mouth; all the members of the organization had to be armed; some had pistols, some had shot guns, and some muskets; they also had a covering for their horses; that was white; the members also had a whistle, which made a shrill, gurgling noise; they also had passwords, signs and grips.

The witness here described them, as on a former occasion. They also had a method of hailing any one who came to their meetings; the party was challenged by saying, "Who goes there?" The reply was, "A friend." "Friend of whom?" was demanded. "Friend of my country," was the reply. Then they had a word of recognition when a member was in distress and others might be present; the word was "Avalanche." I only started on one raid, known as the Jennie Good raid, but as I had no saddle I did not go; in the vicinity where I lived I only knew of three persons who did not belong to the Ku Klux organization; those were my two brothers and a man named Hugh Burrs.

No cross-examination.

#### TESTIMONY OF THOMAS L. BERRY.

Thomas L. Berry was the next witness called by the prosecution. Being duly sworn, he said:

*Direct Examination, by Mr. Corbin.*—Q. Whether you were a member of the Ku Klux organization? A. I was, sir; I joined in January last.

Q. What did you find to be the purpose of the organization after you got in? A. The purpose of the organization was to break down the Radical party by whipping and killing.

Q. Whether you knew this purpose to be carried out in that way in any instance? A. I did, sir. Wesley Smith told me that he and William White, William Smith, and Mr. Spencer killed Charley Good, because he belonged to the Radical party—at least I don't know any other reason; White told me that they hailed Charley on his way home, and asked whether he would rather be killed or take a hundred lashes; he said they got one of his straps, and tied him to a pine sapling, and Mr. White done shot him.

Q. Did you know Charley Good well? A. I do, sir; I have a right to know him.

Q. What sort of a man was he? A. A very good man; I didn't know anything to the contrary.

Q. What did White say about the mode of killing him? A. He said he shot him, and then turned the butt of his gun and sunk the cock in his head.

Q. What was done with the body? A. It was thrown in the river.

Q. Were you there? A. Yes, sir.

Q. Describe the funeral. A. We picked him up and laid him in a piece of bagging; there was three holes cut in each side of the bagging, so a man could put his hand there and hold; we went on in that way and carried him to the river; he was sunk by putting a couple of plough shares to him.

Q. Do you know of any other deeds of that kind, committed by the Klan? A. Yes, sir. About the same time down in Chester District, there was two negroes killed, Sam Skafe and Eli McCollam. Pinckney Caldwell and Joe Smith, members of the Klan, told me they had done it. The men was taken prisoners, and down at Turkey Creek bridge they put them on the banisters and shot them. One fell back on the bridge and the other fell over in the water; when he struck water he swam to a little pile of trash below and caught there, and they shot him dead with an Enfield rifle.

Q. When did you make up your mind to quit the organization? A. After Charley Good was killed; I then determined, whenever I got a chance I would tell all I knew about it.

*Cross Examination by Mr. Wilson.*—Q. You live near Broad river? A. Yes, sir.

Q. How far from Rock Hill? A. It is about 30 miles, I think.

#### TESTIMONY OF JOHN CALDWELL.

John Caldwell, a witness for the prosecution, being duly sworn said:

*Direct Examination by Mr. Corbin.*—Q. How far from Rock Hill do you live? A. About 20 miles, I reckon.

Q. When did you join the Ku Klux Klan? A. 1871, at Yorkville; Albertus Hope swore me in.

Q. Have you ever been on raids of the Klan? A. Yes, sir.

Q. Describe them? A. I was on a raid in January or February; there was Harvey Jennings, Will Johnson, Marion Macofee, John Garner, Levi Garner; we put on disguises and had pistols; we were mounted, and went up to John S. Ferris.

Q. What did you do there? A. They didn't do anything but shoot.

Q. What did you shoot at? A. We shot at Mr. Ferris's, I suppose; but they shot the house; we didn't do anything there. The next raid I was on was at Mr. Barret's, and talked to him a little while and then came home. The next was on Mr. John Harkness; we took him out and talked to him a little about his politics; he was supposed to be a Radical, and they wanted to get him to change his notion.

Q. Did he promise to do it? A. Yes, sir; they ordered him to put a card in the paper, and I think he did it.

Q. What was the object of that card? A. That he would quit the Radical party.

Q. Was Mr. Harkness a white man or a colored man? A. He was a white man; then they came back to Harvey Smith's, and they had some talk with him, and he promised to change his politics and put a card in the paper; the next raid I met at Kulp's Mill, with A. Quinn, and went to Quinn's school house and met Robby Caldwell, John Garner, Levi Garner and Mart Hall, and put on disguises and went down to a nigger named Prince McCautz and whipped him, and then they went to Murphy's, down to York, and then they went on to Anderson Brown's.

Q. Who is Anderson Brown? A. A nigger; that is about all I can tell you.

Q. What did they do with him? A. Well, they killed him.

Q. What did they do with the body? A. Left it lying there; when we got out into the road, we all took an oath not to divulge.

Q. Who administered the oath? A. Robby Caldwell.

Q. Now tell us about the next raid you went on. A. That was at Abner Hambricht's; they went there and whipped him.

Q. He was known to be a Radical? A. Yes, sir.

Q. Whip him pretty badly? A. Yes, sir.

By the Court. How did they get him out of the house? A. Knocked the door open and went in and brought him out; then they went to Harry Neely, a colored fellow, and whipped him.

Q. What did you whip him with? A. Whipped him with hickories tolerably bad.

Q. What did you whip him for? A. Because he was a Radical, I suppose.

Cross-examination waived.

#### TESTIMONY OF JOHN THOMASSON.

John Thomasson, colored, a witness for the prosecution, being duly sworn, said:

*Direct Examination by Mr. Corbin.*—Q. Tell what the Ku Klux did for you? A. The first time there was six came, and they didn't abuse me; they were all disguised; the next time they didn't disturb me much; they cussed me and knocked me about a little; they asked me did I belong to the Union party; I told them I did; they told me God damn me, if I voted that way again they would put me where I never would see this world again; the third raid they came on me they told me to make up a light, and while I was making up a light, one was kicking me behind all the time; one raised up to my clock and put two minnie balls through it, and took the gun and busted the glass part in the clock all to pieces; I had a little glass and a large glass, and they broke them all to pieces, and my house had three glass windows, and they knocked out every pane but one; they put all of the clothes out of the chest and threwed them over the floor, and made me put on another pair of pantaloons, and they took my pocketbook that had seven dollars in it, and took the money out and throwed the pocketbook in the corner; about

this time there was a bottle of ink setting on the shelf, and they told me to drink it; I took some in my mouth, and didn't intend swallowing; says he, "Swallow it down, God damn you, swallow it down;" I swallowed it; so then he asked me if I was going to leave this country; I told him I didn't know as I was; says he "We'll give you from now until Saturday night, and if you ain't gone we'll know what to do with you."

The testimony at this point was too indecent for publication.

They caught me, and knocked me down, and I fell on my elbow and wrenched my shoulder. They left me then.

Q: You then left the country? A. Yes, sir. They came to my house while I was away again and shot through the house, which I know their intention was to kill whoever was lying in the trundle bed. And then they went around and shot close to the window and missed my wife's head about that far [indicating about three inches.] They scared her so she died in July.

Q. Do you think that they hastened her death? A. I do, sir, positive.

Cross-examination waived.

#### TESTIMONY OF ABRAHAM BRUMFIELD.

Abraham Brumfield, colored, a witness for the prosecution, being duly sworn, said:

*Direct Examination by Mr. Corbin.*—Q. How old are you? A. Sixty-four in May.

Q. Voter in York county? A. Yes, sir; voted there at the last election.

Q. What ticket? A. Radical.

Q. Whom did you vote for for member of Congress? A. Mr. Wallace.

Q. Now, tell us whether the Ku Klux raided on you. A. Well, they came to my house about midnight—some time in March. I had laid out about four weeks, until I had taken a pain in my shoulder.

Q. Laid out for what? A. To keep out of the way of the Ku Klux—every night raiding and shooting dogs, and nobody else couldn't rest hardly; I got so bad in the shoulder I thought I had as well die in the house as out of doors, but when I saw death coming I got out; I saw them coming with guns in their hands and disguised, and just throwed the house 'twixt me and them, and laid right down agin a fence about twenty yards from the door, and agin I could get my eye to the crack of the fence, the door was surrounded; when they all got in the house I went off about forty yards from the house to a pine bush, and there I laid; after they had caroused around, they came within ten steps of me and stopped to conclude what way to go back to Ebenezer.

Q. You heard the conversation? A. Every word.

Q. Did you know any of them? A. I never knewed but one man by his voice.

Q. Who was that? A. Dr. Avery.

Q. This man [pointing to the prisoner]? A. Yes, sir.

Q. How long have you known him? A.

From a little bit of a boy—raised within a mile of him.

Q. You recognized his voice? A. I did immediately; you see, when they got down there they didn't change any voice; when they was at the house they talked altogether another way.

Q. You feel absolutely certain that that was Dr. Avery's voice? A. Yes, sir, I am.

Q. Did they whip anybody else that night? A. I don't know, but I met Mr. Postle at Rock Hill next Monday, and told him I was whipped Friday night, and he said he was too.

*Cross-Examination by Mr. Wilson.*—Q. Did you never hear two men talk whose voices were alike? A. To be certain, I have.

Q. Your only reason for saying it was Dr. Avery is that you think you knew his voice? A. I don't think.

Q. You are certain you knew his voice? A. Yes, sir.

Q. You are willing to swear that he was there just because you knew his voice. A. Yes, sir; I am willing to swear any time that it was Dr. Avery's voice.

Q. How can you say but what some man with a voice like his was there? A. I have never heard any one talk like him but his father.

Q. How many men do you think were there? A. I was so badly scared I can't tell.

Q. You were pretty badly scared? A. I was, of course; I think there was some nine or ten.

Q. Do you like Dr. Avery? A. He has been a good man to me, and I have been good to him, and his father, ditto; he treated me like a gentleman and I did the same to him; but it was these Radical parties, that's what is the matter.

Q. Was there a man by the name of Sam Sturges living in your house? A. No, sir; he was laying there that night, but he didn't stay there regularly.

Q. Where does he live? A. At Miss Rhody Jones'.

Q. Where is Rhody Jones? A. Not far from Rock Hill.

Q. This side of Rock Hill, or the other side? A. No; it is on there, across—you know all that country; it is not far from John Campbell's, going sort of towards your house.

Q. I don't live there? A. I know; but where your stationary home was before you went to York.

Q. Did the party go towards Postle's when they left your house? A. They went across from Major Berry's, on the big road, leading up where John Biggers lives, towards Mr. Jewell's; I don't know which way they went after that.

Q. Can you go to Postle's house that course? A. They could by taking the left, of course; you know that road as well as I do.

Q. Wasn't that the plainest road to go towards Postle's house? A. I don't know; but I would be just as nigh; you know every piece of that road as well I do.

Mr. Wilson desired that the government

witnesses should leave the room, and at his request, Mr. Corbin sent out those who had not testified.

#### TESTIMONY OF EMELINE BRUMFIELD.

Emeline Brumfield, colored, a witness for the prosecution was duly sworn and testified as follows:

*Direct-Examination by Mr. Corbin.*—Q. Whose wife are you? A. Abram Brumfield.

Q. The man who was just on the stand? A. Yes, sir.

Q. Now tell the court and jury about the Ku Klux visiting you last winter or spring? A. They came to my house some time in March; I don't know what day of the month, but I was on a Friday night, and Mr. Bromfield had been lying out for four weeks, he came in all swelled up, and told me to make poultices and poultice his arms and shoulders, and I did, and he laid down and I laid on two chairs before the fire until midnight, and then his poultice got cold and he told me to warm it, and when I did, he says, now you go and lay down; I went to bed and after so long, I dropped off to sleep and I was woke up by the alarm of the dog; I knew when that dog barked there was some person in the house; I sprung out of bed and when I got to the door, Bromfield says there is somebody out here, and he went out to the lower end of the house, and I went to the chimney; I seed persons coming up through the woods running, and we went back, and I says "Ku Klux! Ku Klux!" and he just throwed the house 'twixt him and them, and run back for the fence, and they just came in and had a black man by the name of Hampton Avery; he called three times for Bromfield, and I says Bromfield ain't here, and a man that had come up says "You're a God damned liar; he is here;" I throwed open the door and says, "If I am a God damned liar you may come in and get him;" he said, "Now, you have got to tell me where he is; if you don't I will blow your God damned brains out;" I says, "Then you will have me to shoot to-night;" they says, "Well, I am damned sorry he aint here;" I made answer and said, "I am very glad;" "For we are men from North Carolina, and have been riding ever since yesterday dinner time; we heard this old man talked, and I came here to put him where he couldn't talk no more in this life;" they says, "Let's go up in the loft." I says, "There is nobody up there but Sam Sturges;" "Come down out of that; don't wait to put your breeches on; come down, come down!" He come down, and just as he come on the second step they throwed him down; then they asked the old man was he ever hung; told him "No, sir;" if he was ever half hung; "No, sir;" "Well, don't you want to feel how half hanging feels?" He says, "No, sir;" "Well, you have got to feel it;" and they put a line over his neck and held the ends of it up; and then he came to speak to me, and says, "You tell that old man, Bromfield, that I came here to-night to send him to hell, for I am just from hell myself, and I came to send him there;" and the answer I

made was, "When a soul dies and goes to hell it never comes back here again."

Q. Did you recognize anybody? A. The captain.

Q. Who was he? A. There he sits, before me [pointing to the prisoner.]

Q. This man, Dr. Avery? A. That is the man.

Q. How did you know him? A. His disguise didn't cover his moustache, and I noticed he didn't use his left hand; and when he beat my head against the bed-post, and when he had the rope around old man Sturges' neck, I seed his lame hand; I noticed that very particularly.

Q. How long have you known the Doctor? A. Ever since he was a little boy.

*Cross Examination by Mr. Wilson.*—Q. How much of his face was covered? A. All but his moustache here [pointing to the chin.]

Q. Do you call that his moustache? A. Well, whatever you call it.

Q. You mean the beard that comes from the chin? A. That is what I mean.

Q. Did you know his voice? A. I don't go by his voice much; I had other instruments to go by.

Q. Is not there a man in that neighborhood by the name of Frony Fewel, that has got a lame hand? A. I know nothing about him; I know there is no person in that neighborhood that has got a lame hand like Dr. Avery; I seed his moustache, and I seed his hand, and I knew it was the height of Dr. Avery.

Q. You didn't see his face? A. No, sir; I didn't see his face.

Q. What sort of a night was it? A. The moon was shining, and it wasn't right clear nor right cloudy.

Q. Was there a light in the house? A. A very large light.

Mr. Corbin. If the court please, I would like the prisoner to stand up and see whether he has a lame hand or not.

Mr. Wilson. Stand up, Doctor.

The Court. He is not bound to stand up.

The prisoner arose.

The Witness. That is the hand I seen.

#### TESTIMONY OF SAM STURGES.

Sam Sturges, colored, a witness for the prosecution, was duly sworn, and said:

*Direct Examination by Mr. Corbin.*—Q. Tell whether you were at Abram Bromfield's house last spring, some time when the Ku Klux came there. If so, what happened? A. Yes, sir; I was there. They routed me up out of bed. I was up in the loft. They told me to come down. When I got on the step next the bottom, they fastened me by the ears and bully-ragged me over the house, and jerked me down on my knees, and kicked me, and put a pistol to my head.

Q. Did you recognize anybody? A. Yes, sir.

Q. Whom did you know? A. There is the man sitting over there.

Q. How did you know him? A. I knew him by his voice, and I caught his face. He came up and asked me if I knowed him, and his false

face was off at one side, and I noticed all his whiskers there.

Q. How much of his face did you see? A. Just along about this portion of his face, [indicating the back part of the right side.]

Q. How long have you known him? A. Near about twenty-two years.

Q. Live near him? A. Yes, sir.

Q. See him often? A. Yes, sir.

Q. Talk with him? A. No, sir; not much; but I have heard him talk frequently down in Rock Hill.

Q. What did they jerk you up for? A. Because I was a Radical, and belonged to the League.

Q. What did they say about it? A. They made me swear against it. They said their business was to break down these damned Union Leagues, and these Radical parties. They made me swear that I never would vote the Radical ticket any more.

Q. When did you see Avery's lame hand first? A. Directly after he got shot.

Q. When did you first see it that night? A. Before I came down stairs, right through a crack.

Q. Was there a bright light in the room? A. Yes, sir; they had a light roused up.

Q. Did you recognize that hand as soon as you saw it? A. Yes, sir.

*Cross-Examination by Mr. McMaster.*—Q. Was Major Merrill the first man you gave information to that Dr. Avery was in this crowd? A. Yes, sir; he was.

Q. Was that after martial law was declared in York county? A. Yes, sir.

Mr. Corbin. Martial law hasn't been declared there.

Mr. McMaster. Oh! that is a play upon words. Q. Who put the rope around your neck—was it Dr. Avery? A. No, sir; that ain't the man; the man that put the rope around my neck was a black man.

Q. Any body else take hold of the rope? A. No, sir.

Q. What spite had these devils against you? A. I don't know. I didn't give any person any occasion, more than I was a radical.

Mr. McMaster. Well, that is a very great misfortune, but it pays sometimes.

At 4 o'clock the court adjourned until 11 a. m. Saturday.

## TWENTY-FOURTH DAY'S PROCEEDINGS, DECEMBER 30,

The court met pursuant to adjournment, Hon. H. L. Bond presiding, G. S. Bryan Associate Judge.

#### TESTIMONY OF HARRIET POSTLE.

*Examination by Mr. Corbin.*—I live in the eastern part of York county, about four miles from Rock Hill, on Mr. James Smith's plantation; I am about thirty years old; my husband is a preacher; I have a family of six children; the oldest is about fourteen; the Ku Klux visited me last spring; it was some time in March; I was asleep when they came; they made a great noise and waked me up, and called out for Postle; my husband heard them and jumped up, and I thought he was putting on his clothes; but when I got up I found he was gone; they kept on hallooing for Postle and knocking at the door; I was trying to get on my clothes, but I was so frightened I did not get on my clothes at all; it looked like they were going to knock the door down; then the rest of them began to come into the house, and my oldest child got out and ran under the bed; one of them saw him and said, "There he is, I see him;" and with that three of them pointed their pistols under the bed; I then cried out, "It is my child;" they told him to come out, when my child came out from under the bed; one of them said, "Put it on his neck;" and the child commenced hallooing and crying, and I begged them not to hurt my child; the man did not hurt it, but one of them ran the child back against the wall, and ground a piece of skin off as big as my hand; I then took a chair, and sat it back upon a loose plank, and sat down upon it; one of the men stepped up; seeing the plank loose he just jerked the chair and threw me over while my babe was in my arms, and I fell with my babe to the floor, when one of them clapped his foot

upon the child, and another had his foot on me. I begged him for the Lord's sake to save my child. I went and picked up my babe, and when I opened the door and looked, I saw they had formed a line; they asked me if Postle was there; I said no; they told me to make up a light, but I was so frightened I could not do it well, and I asked my child to make it up for me; then they asked me where my husband was; I told them he was gone; they said, "he is here somewhere;" I told them he was gone for some meal; they said he was there somewhere, and they called me a damned liar; one of them said, "He is under the house;" then one of them comes to me and says, "I am going to have the truth tonight; you are a damned, lying bitch, and you are telling a lie;" and he had a line, and commenced putting it over my neck; said he, "You are telling a lie; I know it; he is here." I told them again he was gone; when he had the rope round my head, he said, "I want you to tell where your husband is;" and said he, "The truth I've got to have;" I commenced hallooing, and says he, "We are men of peace, but you are telling me a damned lie, and you are not to tell me any lies to-night;" and the one who had his foot on my body mashed me badly, but not so badly as he might have done, for I was seven or eight months gone in travail; then I got outside of the house and sat down, with my back against the house, and I called the little ones to me, for they were all dreadfully frightened; they said my husband was there, and they would shoot into every crack, and they did shoot all over the place, and there are bullet holes there, and bullet marks on the hearth yet; at this time there were some in the house and some outside, and says they to me, "We're going to have the truth out of you, you damned lying bitch; he is somewhere about here;" said I, he is gone; with that he clapped his hands on my neck, and with one hand put the line over my neck, and he says again, "We're going to have the truth out of you, you damned bitch;" and with that he beat my head against the side of the house till I had no sense hardly left; but I still had hold of my babe.

Mr. Corbin Q. Did you recognize anybody? A. Yes, sir, I did; I recognized the first man that came into the house, it was Dr. Avery, [pointing to the accused.] I recognized him by his performance, and when he was entangling the line round my neck; as I lifted my hand to keep the rope off my neck, I caught his lame hand; it was his left hand that I caught, his crippled hand, I felt it in my hand, and I said to myself right then "I know you;" and I knew Joe Castle and James Matthews, the old man's son; I didn't know any one else; I suppose there was about a dozen altogether there; Dr. Avery had on a red gown with a blue face with red about his mouth, and he had two horns on his cap about a foot long; the line that he tried to put over my neck was a buggy line, not quite so wide as three fingers, but wider than two; They said to me that they rode thirty-eight miles that night to see old Abe Broomfield, and preacher Postle; they said that they had heard that Preacher Postle had been preaching up fire and corruption; they afterward found my husband under the house, but I had gone to the big house with my children to take them out of the cold, and I did not see them pull him out from the house.

Cross-examination by Mr. McMaster.—Mr. Smith's plantation is about two miles from Ebenezer; I don't know how far it is to Abram Broomfield's house, I never was there; I do not live far from Dr. Avery; I see him frequently, sometimes every day; Dr. Avery was always kind to my husband as far as I knew; there were no cross feelings between them that I knew; I don't know that he ever talked or advised with my husband about his preaching; the raid was made on us on Tuesday night; it was a bright moonlight night; Dr. Avery was the first man that came into my house; I don't think I knew him until the fire was made up; he did not put the rope round my neck till there was a light; he had a pistol in his hand when he came in but he did not have anything in his hand when he put the rope over my neck; I don't know that he made a loop or noose before he put the line over my neck, but I know when I raised my hand, I caught his left hand in mine. Its true I was very much frightened, but I know that the man that first came into the house was the one that put the line over my neck; when they put the line over my child's neck, they asked him

where his father was; the child did not know and began to cry. I don't know who it was that lifted the plank up, and tilted me over with my babe; I was sitting on the chair on the plank, with my babe in my arms, when they tilted me up. The man who put his foot on my babe was Dr. Avery, [pointing:] I can't be sure whether he put the line over my neck before or after I was tilted up, but it was after the light was made. My child was scared well nigh to death, and now when the dog barks, it looks like it would go into fits. I begged him to take his foot off my child, and I grabbed him by the boot, and then he took his foot off, when I asked him. Dr. Avery, I know, has a little family of his own, of little children, but I am certain he put his foot on my child that night. Some of the Ku Klux had false faces on, and some had old ragged over their faces, and some had white faces; the only three I knew were Dr. Avery, Mr. Castle and Mr. Matthews; I don't know what has become of Mr. Castle; I believe he has gone away. The first white person I told about this, was Mr. Corbin. I told my husband about it, but he is the only one besides I told particularly. Dr. Avery has talked to me some about it; one day Mr. Cooper came to see my husband; Mrs. Avery wanted him to come up to her to see her, but my husband was away; she wanted my husband to withdraw the charge, or something like that.

#### TESTIMONY OF ISAAC A. POSTLE ALIAS ISAAC THE APOSTLE.

Examined by Mr. Corbin. I live in York county, near Rock Hill, about four miles from Mr. James Smith's place; I have been a preacher for about five years; I have lived in York county ever since the days of emancipation; the Ku Klux came to my house last spring; it was on Friday night, and I judge it was between three and four o'clock; they came and called for Postle to come out; thinking I might be killed and being quick to wake, I jumped up, and my judgment was to get out of the way, and there being a loose plank in the house, I got under the floor; my wife she put the plank back and after she had gathered the baby off the bed she just went and opened the door; all this time they were knocking and calling out to open the door; when they got in they began with her, to find out where I was; some said he is under the house, and my wife told them he had gone away; that I had gone up the river for some meal; they cursed her and told her it was a d—d lie; some of them made for the loose plank, and cried out here's where he went; they turned up the plank and looked and commenced beating and knocking about; I heard my wife screaming and hallooing, and after they had got through with her and knocking her over, and putting the rope around her neck, they called for a light and they got two or three pine torches; some of them went on one side of the house with their torches, and the others stood on the other side, and I could see them looking round and under the house.

Then one of them, that I took to be the captain, saw me and pointed his pistol at me, and said come out, if you don't I'll kill you; then I came out as far as the top of the floor, when he grasped me by the hair, and one of the men struck me with something like a club; it was a thing that tapers off at one end, and people call it a sling-shot; the man who had hold of me asked if I knew him; I said no sir, but he still had my hair; he then put a line round my neck and gathered it up in his hand, and took me out of the house; they took me about 250 yards till we struck the woods; then the crowd got round me and questioned me, and asked me if I hadn't been preaching up burning and corruption, and telling the people to set fire to the gin houses and barns; said I, no, sir; I never did; said I, I have never preached nothing but peace and harmony, and they repeated their questions over and over again; said I, we have had no disturbances in this part of the country, no burnings nor anything like that in this part of the country; said they, do you know who set any of these barns on fire? said I, I do not, I have been travelling up and down the river preaching in my circuit, and don't know anything about it; then they called me a d—d liar, and said I could tell them if I liked; then they began to question me about guns, and I told them that I knew nothing about them; then they said jerk him with the line, and they made one of them go up a tree, and said they, we will have the truth directly; I thought then they were going to hang me, the one that went up, he drew me up till I had to stand on tip-toe;

only my toes touched the ground, so that I was choked and could not tell them anything; then they slackened the line a bit and put all these questions to me over again; said I, I know nothing about any of these burnings or disturbances; then the captain told each of the men to hit me two licks apiece, and they stopped up and he handed them something like a halter an inch and a half wide, and with that they gave me two licks a piece as hard as they could; my flesh was cut so much that it bled, for I had nothing on but my shirt and my slaps.

Then the man that had been up in the tree came down and took the strap, and he hit me his two licks; the captain then took the line and loosed it off my neck, and questioned me something about my children, and said, Did you say that you would raise your children as good and as nice as any body's children? said I, No, sir, I cannot raise my children so well, because I am not able; with that he took the line off my neck, and said he, if there is any more burning of gin houses in the country, we intend to kill ten niggers for every one burned and you'll be the first one; he said it just so.

Then they asked me about my politics, and if I did not belong to the League society, and wasn't I for Grant; and I say, No, sir; and I told them I was sick at the election time and couldn't vote, and at another time I was away preaching; then they asked me again if I did not preach corruption and burning, and I told them I didn't, I preached only peace and harmony, and I didn't advise or instruct anything that was wrong; I said that ever so many times, but it didn't seem to have any impression.

Q. Did you recognize any of the party? A. Up to the time they took the rope off my neck I didn't recognize any one, for up to that time it wasn't my expectation that they would let me off; but when they took the rope off my neck it kindled hope in my mind, and the man they called captain talked with me, and said that they were men of peace, of justice and of right, and then it was that I believed that Mr. Avery was one of the men; I had no knowledge of any man up to that time, because from the time they took me from the house they kept jerking at the rope that was round my neck, and when they took the rope off I gathered some hope, and then I judged that Mr. Avery was the man, and that Howard White was another, and James Matthews another.

The witness had told his story up to this point with a good deal of repetition. He was here interrupted by Mr. Wilson, who said that the witness ought to be instructed to state the facts upon which he based his assertions.

Judge Bryan. The witness must be allowed to state his testimony in his own way.

The witness continued: These men I have spoken of I believe were in the party. Howard White is a colored man, and I believe a Democrat. He has left our part of the country, and I don't know where he is now. I didn't recognize anybody else in the crowd. The men appeared to be dressed in different colors. When I was under the house I looked at the captain, and his dress appeared to be blue and yellow. He had horns on his head over a foot long, and something over his face that appeared to be of different colors. I didn't hardly know what it looked like, but I believe it was blue and yellow. He had a long gown that came pretty much down towards his feet. Some of them had on dresses as I saw while I was under the house, that appeared to be short dresses like half grown girls wear, and seemed to come down to their knees. Some of them had old handkerchiefs over their faces with holes in them for their eyes. I think there were about twelve in the company, but I did not count them.

Q. Had you been preaching corruption and burning in the country? A. I had not sir; I can state what I preached.

Judge Bond. We don't want that; we don't want to hear a sermon.

A voice (*sotto voce*) at the counsel's table. It might do the court good.

I had some conversation with Abram Bromfield about his being visited by the Ku Klux. I went to Rock Hill on the Sunday morning after the Friday on which I had been whipped, and saw Abram Bromfield, who told me how they visited him, and he was thinking how he could make his escape; but there was a company of Yankees there at the time, and we supposed they were come to protect us. I and Mr. Bromfield talked it over, and I told him that I had heard them say they had come 38 miles that night for old Abe Bromfield and Postle. I was under the house when I heard that.

Cross-Examination by Mr. Wilson.—I am acquainted with Nancy Dunlap, but I do not know that I mentioned to her about my having been whipped; and I don't remember talking with her at Ebenezer, in the presence of other people, about it. When I said I knew it was Dr. Avery, from the "commonness" of his talk, I meant that I was commonly with him, and knew his language very well, because I passed and re-passed him so often, and I naturally believed he was the man.

I did not make a statement afterwards that Dr. Avery was not the man.

A paper was here handed the witness.

Mr. Wilson. Did you sign that paper? A. Yes, sir.

Q. And made that affidavit? A. That is my signing.

Q. Before what magistrate did you make that affidavit? A. Mr. Crook, I believe it was.

Q. Was the Rev. Mr. Cooper present? A. He was.

Q. Who drew the paper? A. Mr. Cooper.

The affidavit was here read, as follows: "Personally appeared before me, R. C. Cook, Trial Justice in and for the county aforesaid, Isaac A. Postle, alias Preacher Postle, who, being duly sworn, deposeth and saith, that the following charges against Dr. Avery, on the night in March 1871, to oppress, threaten, injure and intimidate the said Isaac Postle, the preacher, are, according to the evidence now appearing, incorrect and false.

"Signed, A. POSTLE."

Q. You made affidavit, then, that the charges against Dr. Avery were false? A. No, sir; Mr. Cooper put in that about my being satisfied; it was false and incorrect.

Q. Was not this read over to you before you signed it? A. Yes, sir; Mr. Crook read it to me in Mr. Cooper's presence.

Q. Was any one else present? A. I don't know that there was any one else present, but several persons were passing and re-passing.

Q. Did you not express the belief that the charge against Dr. Avery was untrue? A. If you want that matter explained I can tell you all about it.

Q. Well, tell all about it? A. After the charges against Dr. Avery were, I suppose, published in the papers, one night, Wednesday, my wife told me after I had come home from an appointment that Mr. Cooper had been to our house, and wanted to see me very much; he wanted to see me as much in my behalf as it was in his own; he told my wife he wanted to see me very much; the next morning, which was Thursday, I crossed the country, and met with a man that Mr. Avery used to own, returning from Ebenezer, Mr. Bromfield was with me when he met us; he told us that Mr. Avery was put in prison for whipping Postle and Sam Sturges, and said he, "Mr. Cooper told me that they asked about you and wanted to see you." I told him I would be certain to see him, and he said I must be sure to come on to Mr. Cooper's house, going home I passed by Elias Masse's house, and calling there he told me that Mr. Cooper had been there that night, and had left word that if he saw me to be sure to tell me to come up to see him; I first went home to see my wife, but she was out at a neighbor's; I went there to see her, and while I was there Mr. Cooper came there, and we had some talk; says he, "Postle, I want to see you as a friend;" and says I, "A friend is hard to find; I have been living in trouble and alarm all the year;" says he, "I want to talk with you about a matter that is in your behalf as well as in mine;" says he, "Charges are coming out against Mr. Avery, and he is put in prison for whipping Postle and Sturges;" Mr. Cooper said, "From that we believe that you have put him in prison;" said I, "I have not put him in prison;" "Well," said he, "here are the charges anyhow;" then said he, "If we can show you sufficient lawful evidence will you withdraw the charges?" I told him, Mr. Cooper, I did not believe he could do it with lawful evidence; "Well," said he, "if we can will you do it?" Said I, "I don't believe you can;" said he, "It is not your will or desire to punish a man that is innocent?" Says I, "It is not the mind of any Christian man, much less a preacher, to punish a man if he is innocent."

Then he wanted to know if Dr. Avery had ever threatened me or intimidated me at any time; no, said I; as for passing and re-passing, he has never interfered with me; he urged upon me to give him some satisfaction, and wanted me to go

that evening and see Mrs. Avery; no, said I, I have been traveling and am tired; but he urged it upon me very much, and though I did not want to go, at last I consented. "he is in trouble," said he; and I said I did not put Mr. Avery in prison, and I cannot take him out; "Never mind," says he, "you just come and see her; he won't be in prison always," says he; and then I began to think when they got out it might be that they would oppress, or arrest, or whip and disturb us, as they had done; Mr. Cooper would not leave me until I promised to go and see Mrs. Avery the next morning; my wife tried to persuade me not to go, but I saw Mr. Cooper riding up the road, and I told him I could not do Mrs. Avery any good, and I said to him, I don't know Mrs. Avery, and I learn that she is a high spirited woman, and if I talk to her she may get mad, and I don't know what will come of it; said he, "You must go," we went up, and she invited us in, and we sat by the fire, and she said to me, "Has Mr. Avery ever threatened you, or hindered you, or forbidden you from bearing arms, or anything of that kind?" No, said I, he has never interfered with me in that way; she then told me that Dr. Avery had been put in prison for whipping Postle and Sam Sturges; "And," said she, "if I give you lawful evidence that will satisfy you that he did not whip you, will you withdraw the charges?" Says I, Mrs. Avery, I did not put Mr. Avery in prison, and nothing that I can do can take him out; I never swore against him, and I don't intend to swear either way, said I; then she got up and read the charges to me; said I, that was when they shot into my house and asked me about arms; then she said that she had sufficient evidence to show that he had not troubled you; said I to Mrs. Avery, these Ku Klux do their work in the night, and no one knows it; and I don't believe that your husband could leave your bed very long without you know it; we had been talking so long that I began talking very common to her; "I will swear," said she, "that Dr. Avery did not do it;" I felt very small being with a lady like her—of her ability and position—and I felt it was almost wrong not to submit to her; "Will you not take my oath," said she, "for I will swear to it;" says I, "I don't want you to swear; I never swore against Mr. Avery;" then Lizzy and Ellie Chambers said, "We will swear that Mr. Avery did not whip you; he didn't leave his house or bed;" said I, when it was done it was midnight and dark work, and nobody knows anything about it up to this time; then they talked to me for a considerable time.

At last Mrs. Avery said, our talk is all in vain, and said she, if it was me I would not take the favor of any man, I would present my case and call for my evidence, and they would come up and prove me guiltless; and said she, I would see you for "salt and porgery," if I don't like the language, for I am not very common with words according to the law; and, said she, "I would bring you to the same condition, and as such, to be cropped and branded, and penitentiaries for ten years, and perhaps for your life time;" then I flinched, for I had never been in the law; I did not know what to say or do; said I, Mrs. Avery, I have been in fear and dread all the year, and now it is the same thing over again.

Mr. Cooper then spoke up and said they would take the effort of the law on me, and sue me for "salt and porgery," and throw me into the same condition, and as such, I would be cropped, branded and penitentiaries; after this I began to feel miserable and there I sat; Mr. Cooper and Mrs. Avery and Lizzie and Ellie Chambers, all said they would draw on their oaths, and they said their oath would be taken in court; and said Mr. Cooper, we will have a chance after a while; then says I, I will withdraw on your oath, but not on my oath, that is how it was; then we went to the magistrate, and Mr. Crook did the writing, but it wasn't right, and then Mr. Cooper wrote it, and as I understood it it was resting on their oath, not on my oath; that I would withdraw on their oath, and then I signed it; that is the way the whole matter went.

Q. Did this man that took the rope from your neck strike you with both or one hand? A. I don't think, to give the men justice, that any of them struck me with both hands.

Re-Direct Examination—Q. What did you mean by this language in your affidavit: "According to the ev-

dence now appearing?" A. That was those women Kizzy and Louisa Chambers, servants of Dr. Avery; says I, if their evidence is good, then I must be mistaken.

Q. Do you think you are mistaken? A. I don't, at all; I still believe Dr. Avery was the captain of the party that night.

#### TESTIMONY OF THOMAS MOREHEAD.

Thomas Morehead, colored, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.—Q. State whether the Democrats at Rock Hill crowded the polls at the election in 1868. A. Yes, sir; the polls were very much crowded, and a great many colored people were crowded away.

Q. Who was a prominent man standing around the polls in the way? A. Dr. Avery and other white men stood in a ring around the polls, and elbowed colored men back.

Q. Have you lived in Rock Hill since then? A. Until this year.

Q. Why did you move away? A. On account of threats by the Ku Klux; they put up a notice two or three times; the last one had 'Squire Davis' and my names at the head of it.

Q. What did that paper say? A. They had marked on the top of it, as well as I can remember, "K. K. K.," and it read, "Oh, ye blind and foolish parties; stop, stop and study before you further go;" and at the bottom of it they had a grave and a coffin; it says, "We won't stop; we have guns and bayonets; we have Bowie knives and pistols, and if you won't now stop before you further go and listen and sympathize with us, then you shall be shut up in a lonesome valley, where you will never be heard no more;" I don't recollect it all; there was about twenty or thirty pages of it.

Cross-Examination by Mr. Mc Masters.—Q. Which got the majority at Rock Hill at that election in 1868? A. Well, it was said that the Radical party, but I don't know.

#### TESTIMONY OF GOVERNOR FEWELL.

Governor Fewell, colored, a witness for the prosecution, being sworn, testified as follows:

Direct Examination by Mr. Corbin. Q. Are you a Republican or a Democrat? A. I am a Republican, sir.

Q. State whether the Ku Klux visited you? A. They visited me before the election, in 1868; they shot all in my house and knocked down my door, and aimed to come in and I knocked them down as they came; they called for a boy that Captain Ferris had, and I told them, if they didn't leave my door I would give them a load of shot; they went back and came again and threw down my door, and aimed to come in, and after I knocked them down so fast they went around my house and shot it.

Q. Did you know any of them? A. I knowed Dr. Avery, and Parker Wilson, and Gaines Abston.

Q. Is this the Dr. Avery here? A. Where is he [catching sight of the prisoner] yes, he is the very man, I won't deny, he is the very man. They shot in Captain Ferris's room that night, and if he had been in bed they would have killed him.

Q. Were they disguised? A. Yes, sir.

Cross Examination by Mr. McMaster. Q. You knew these people by their voices? A. Yes, sir.

The prosecution rested, and Mr. Corbin asked that the defendant's witnesses be sent from the room, except Dr. Talley, who, he understood, was present as an expert witness.

#### TESTIMONY OF REV. R. E. COOPER.

Rev. R. E. Cooper, white, a witness for the defense, being duly sworn, testified as follows:

Direct Examination by Mr. Wilson. Q. What conversation had you with Postle in relation to the occurrence he has described? A. I conversed with him on Monday, and he said that on the previous Friday he had been visited by a number of disguised gentlemen, and that they sorely afflicted him, as he has stated. I asked him if he knew any person that was present, and he told me he did not, and if he swore to any person at all he would swear to it.

Q. Were you present at the interview between Mrs. Avery and Postle? A. I was: she said Mr. Postle, I have sent for you in order to lay some facts before you; as the wife of Dr. Avery, my testimony will be worth little or nothing, but my testimony to you is valid, if you will believe me what I say; I am willing to testify upon my oath, and rising to the importance of the oc-



casion, she remarked "if my hopes of salvation depended upon the statement, which I am now about to make to you, I would still say it, that Dr. Avery, my husband, was in my chamber that entire night;" and gentlemen, I conceive that to be true; then she summoned aunt Kizzy and Louisa in the room, and aunt Kizzy says, in her own peculiar dialect, "Mr. Postle, nuss' El was at home that night, and I am willing to swear it on a stack of bibles as high as the sky;" and Son, the other servant, says, "Dr. Avery was in his chamber that entire night." I told Postle, I saw no difficulty in the way of his giving the affidavit; that Mr. Avery didn't wish to secure this affidavit in order to liberate Dr. Avery from a trial, but release him from confinement in York jail; so far from saying anything at all about twenty years' imprisonment in the penitentiary; it is true we referred to the penalty of perjury, but only in the abstract. Mrs. Avery made this remark "now Postle, I neither threaten, I neither beg, nor either do I buy, but I ask you in the name of justice if you are satisfied with this evidence to give your affidavit; the old negro said he did, and I ordered my horse, and took him with me to a magistrate, and at the request of the magistrate I drew the affidavit, and Postle swore to it.

*Cross-Examination by Mr. Corbin.*—What did you tell Postle the consequences of perjury were? A. I told him that the law would have redress; I didn't state particularly, for I don't know now what the consequences are.

Q. Didn't you tell him that a man who committed perjury would have to go to the penitentiary? A. No, sir; I didn't, and neither did Mrs. Avery.

Q. What did you say anything about it for? A. I wanted to get the old negro to tell what I believed to be the truth. Some person had sworn that Dr. Avery committed these charges, and we knew them to be incorrect, and if he testified to that crime, he would lay himself liable I think to the law.

Q. How did you know the charges against Avery were incorrect. A. I knew it, sir, upon the testimony of Mrs. Avery, a lady of uncompromising veracity, and I believe I it as implicitly as if I saw it, because I know Mrs. Avery is a truthful lady.

Q. You knew the Ku Klux were raiding around the country? A. It was a general rumor through the country. It was a common report, but I paid no attention to it.

Q. It didn't interest you? A. Not at all.

Q. Did you ever preach against these whippings and murders by the Ku Klux? A. No, sir; I was not commissioned to preach against those things. I don't preach political sermons at all.

Q. You regarded this Ku Klux raiding on the colored people a political matter, did you? A. Well, I don't know; I always—the impression I did form about it was simply an organization in opposition to the Union League.

Q. But I am asking you about this whipping and pounding of people to death? A. I thought that was wrong.

Q. But you didn't preach against it? A. I never conceived, sir, that I had any right to preach against raidings of that kind. I have no colored people belonging to my congregation at all.

Q. You never thought it your duty to speak against these outrages? A. My idea is to preach Christ and him crucified, and let it stick to my text.

Q. You didn't think that involved the bodies and souls of your congregation? A. No; because I didn't suppose any of my congregation belonged to it.

Q. Did you or not state to Colonel Merrill that you never stated the consequences of perjury to Postle?

This question had been put to the witness several times and evasively answered; finally Mr. Corbin said:

Q. Will you say whether this didn't pass? A. Put your question again, and I will answer it on my honor as a minister.

Mr. Corbin. I would rather have your oath.

The Witness. I know I am on oath, but I consider my responsibility as a minister, and my accountability to God as binding on me as my oath in law.

The question was repeated.

Judge Bond. Now you can answer that certainly.

A. I have no recollection of making that statement to Col. Merrill.

Judge Bond. You have been a quarter of an hour stating that fact.

The court here adjourned until seven in the evening.

## EVENING SESSION.

The court met again at seven, and resumed the business before it.

### TESTIMONY OF LOUISA CHAMBERS.

Louisa Chambers, colored, a witness for the defense, being duly sworn, testified as follows:

*Direct Examination by Mr. Wilson.*—Q. What is your business? A. I am a nurse at Dr. Avery's.

Q. Where was you upon the night of this raid upon Postle and Sam Sturges? A. I was in Dr. Avery's house; I usually sleep in the room opposite his door, a piece from the house; but that night I was in the house. The baby was sick with teething, and I slept right in Dr. Avery's room.

Q. Do you know whether he remained at home that night? A. Yes, sir; he remained at home the whole night.

Q. When did you hear of this raid? A. The next morning.

*Cross-Examination by Mr. Corbin.*—Q. How many nights did you stay in the room? A. Two nights.

Q. Which was the first night? A. Friday night.

Q. What was the matter with the child on Saturday night? A. The same; it was teething.

### TESTIMONY OF KIZZY AVERY.

Kizzy Avery, colored, a witness for the defense, being duly sworn, testified as follows:

*Direct Examination by Mr. Wilson.*—Q. Where do you live? A. I am a cook at Dr. Avery's.

Q. Where do you sleep at night? A. In my room, about ten steps from the white folks' door. I can see from my room right into Dr. Avery's.

Q. Did you hear of the whipping of Postle and Sturges? A. Yes, sir; on Saturday morning, the next day after it happened.

Q. When was that? A. That was in March.

Q. Where did Louisa Chambers sleep that Friday night? A. In the house; the baby was sick, and they called on her to sleep in the house.

Q. Did you see Dr. Avery that night? A. Yes, sir; he can't go out any time but what I know it; I didn't hear him moving about that night at all after he went to bed.

Q. Were you present at the interview between Mrs. Avery and Postle? A. Yes, sir.

Q. What did Postle say? A. He said that he didn't prosecute Dr. Avery, and couldn't say it was Dr. Avery.

Q. You heard no threats made to him? A. No, sir; no threats.

*Cross-Examination by Mr. Corbin.*—Q. When did you first begin to talk about this being on Friday night? A. After Dr. Avery was put in jail, I talked with Mrs. Avery and told her I remembered it was Friday night.

Q. Didn't she tell you that she remembered it before you told her that you remembered it? A. Yes, sir.

Q. Do you remember Mr. Avery saying to Postle if he committed perjury he would have to go to the penitentiary for twenty years? A. She said providing if Dr. Avery went; if he said Massa El had to go to the penitentiary, he would have to go too.

Q. Did you hear Mr. Cooper say the same thing too? A. Said providing he went, mind.

Q. Do you remember what ailed the baby that night? A. Had something like the colic.

### TESTIMONY OF DR. TALLEY.

Dr. Talley, a witness for the defense, being duly sworn, testified as follows:

*Direct Examination by Mr. McMaster.*—Q. What was your occupation during the war? A. Surgeon in the Confederate army.

Q. Have you ever examined Dr. Avery's hand? A. Yes, sir; I examined the wound to-day by request; traces of the wound are still apparent in the arm; but the brachial plexus nerves were torn through entirely, and the nerves which preside over the motions of the forearm, especially the extensor muscles of the forearm, are paralyzed completely, so as to deprive him of the power of moving the fingers; the arm is entirely useless.

Q. With regard to the capacity of raising the arm up? A. That is very much impaired; he has more power over the arm than over the forearm; he could raise the arm to a horizontal position; he could not extend it to any height.

At the request of Mr. Wilson the prisoner exhibited his hand to the jury.

*Cross-Examination by Mr. Corbin.*—Q. Is the position of the hand permanent? A. Yes, sir.

Q. Whether the arm is raised up or hangs by the side the hand remains a fixture? A. Yes, sir.

#### TESTIMONY OF R. P. MAYRANT.

R. P. Mayrant, a witness for the defense, being duly sworn, testified as follows:

*Direct Examination by Mr. Wilson.*—I was a constable at Rock Hill in 1868; there was no crowding of the police there; Dr. Avery was there a while in the morning and went away; I was a member of the constabulary force.

*Cross-Examination by Mr. Corbin.*—Q. Did he challenge anybody? A. I didn't see him, but I don't know.

#### TESTIMONY OF FRANKLIN H. BROWN.

Franklin H. Brown, a witness for the defense, being duly sworn, testified as follows:

*Direct Examination by Mr. Wilson.*—In the fall of 1868 I was solicited to meet to organize for self protection, and I concluded to go; they said it was simply for self defense, and if I concluded to go into it I must be initiated; so I took an oath.

Q. Who initiated you? A. Dr. Avery.

Q. How long did that organization last? A. I don't know anything about that; we broke up at once after I was initiated; I never heard of a meeting after that.

*Cross-Examination by Mr. Corbin.*—Q. What was the process of initiating you? A. There was a handkerchief thrown over my face; I don't know much more about it.

Q. Made you kneel down? I think they did.

Q. Do you remember that you swore not to reveal the secrets of the order under the penalty of death, death? A. I think there was something of that kind in the last of it.

Q. Did you see any disguises? A. I saw one man disguised.

Q. What did you want of disguises for mutual protection? A. That is what I didn't know.

Q. Where was this meeting held? A. In an old pine field about fifty yards from the road.

Q. When? A. In the night.

#### TESTIMONY OF FRANK CARUTHERS.

Frank Caruthers a witness for the defense, being duly sworn, testified as follows:

*Cross-Examination by Mr. Wilson.*—I joined an organization for home protection in 1868; Fredell Jones was chairman of the meeting when I joined; Robert Alston, a clergyman, was sworn in at the same time; I don't know what became of the organization; I never heard of any meetings.

#### TESTIMONY OF JOHN A. MCCOLLUGH.

John A. McCollough, a witness for the defense, being duly sworn, testified as follows:

*Direct Examination by Mr. Wilson.*—I joined a society for home protection in 1868; there was nothing said in it about interfering with the colored people, nor intimidating them; there was some secrecy in it; I was blindfolded and took an oath. Rev. Robert Alston joined at the same time.

*Cross-Examination by Mr. Corbin.*—Q. Do you remember that the oath said you were not to divulge anything under the penalty of death, death? A. Well, I think there was some secrecy about the thing.

Q. And some death about it too, wasn't there? A. I don't know; I expect there was.

At 11 o'clock P. M., the court adjourned until 11 o'clock Monday morning.

## TWENTY-FIFTH DAY'S PROCEEDINGS, JANUARY 1.

The Court met pursuant to adjournment. Hon. H. L. Bond, presiding; Hon. Geo. S. Bryan Associate Judge. The defense announced that they here closed the case.

#### TESTIMONY OF C. H. BANKHEAD.

Called by the Government in rebuttal.

I am on duty as a juror in this Court. On Saturday evening I saw the witness, Lizzie Chambers, in close conversation with Dr. Avery just before the opening of the Court for the evening session. They were just at the bottom of the "State House" steps in the rear; I was coming up to the Court House and saw a lady and Dr. Avery in front and an old lady, the gentleman was in close conversation with this younger lady, and when the witness, Lizzie Chambers, came on the stand I perceived that she was the one that Dr. Avery had been talking to.

#### TESTIMONY OF GOVERNOR FEWELL. (COL.)

I was present at the election at Rock Hill, in the fall of 1864; Mr. John Ratcree, Dr. Avery and Ira Jones, were there crowding colored people from voting.

*Cross-Examination by Mr. Wilson.*—I think the colored people had the majority of votes, but those gentlemen, tried to over-per-ude the colored people, and to push them away; they shoved them back to keep them from voting, and tried to make them vote on the Democratic side; they pushed some of them back because they said they were not old enough to vote; I don't know who the election was for; I don't know that they were voting for members of Congress; but I just voted.

Q. Who did you vote for? A. I voted for Grant.

Q. Who else. A. Scott?

Q. Who else? A. Dr. Neagle, and I don't know who.

#### TESTIMONY OF MAJOR MERRILL.

Q. Are you a United States officer on duty at Yorkville? A. Yes, sir.

Q. How long have you been on duty there? A. Since the 26th of last March.

Q. State whether about two or three weeks ago the Reverend Mr. Cooper, of Rock Hill, came to your office in Yorkville, and had conversation with you in reference to the intimidation or interference of Isaac A—, one of the witnesses? A. Yes, sir; such a conversation occurred in my house.

Q. State how it commenced and what was said, as nearly as you can recall it? A. Mr. Cooper had been arrested by the United States Marshal on a warrant issued as the result of charges of intimidation; he was brought by the United States Marshal to my house; when he got there, I was at dinner; a few minutes subsequently, I went into the parlor and found him there, and asked him to sit down; he instantly began a series of explanation of his relations to the indictments; I checked him, and cautioned him that he was before me, while I was acting in my official capacity, and that an admission he might make in regard to the matter might be used against him as evidence, and that he should, therefore, be careful in his statements, and make no admissions that might injure himself; I further cautioned him by telling him that I had no disposition to discuss the merits of the case; he expressed a great deal of solicitude to discuss the case, and did so at some length; after again cautioning him, I said he might say anything he pleased, and I would listen to him; in the conversation I repeated to him what had been told me by Postle, as to the character of the intimidation used by Mr. Cooper and Mrs. Avery; Mr. Cooper positively denied that any such language had been used; he then said to me that possibly the negroes own notion of perjury had influenced his mind as to what had been stated to me; on his suggesting this to me, I asked him distinctly if anything at all had been said by him, or by any other person to this man Postle in regard to perjury; he distinctly and repeatedly said that no allusion was made to it at all.

Q. What did you state to him of Postle's story to you? A. I told him I had learned; I do not remember I told him of whom—possibly it was from the counsel for the defense, that Postle had made an affidavit, which, without looking at it, I understood Postle to say was, in effect, a denial of any knowledge of the relations of Dr. Avery to this particular outrage; I had not looked at the affidavit at that time; I told Mr. Cooper that fact; I was not sure that I told him where I got my information

from in regard to it; having been especially anxious to protect government witnesses against intimidation, I sent for Postle and questioned him in regard to it; he repeatedly, substantially, the story he told here on the witness stand; that story I repeated to Mr. Cooper, and said I had nothing to say about its truthfulness; that I did not charge, personally, that the matter related by Postle was true, but that it had become necessary for me, in the discharge of my duty, to issue a warrant for his arrest, for intimidation, and then followed the conversation.

Q. Then he was fully advised by you, that Postle had stated to you, that he had named the consequences of perjury? A. Yes, sir; I stated to him, in explicit terms, that Postle had told me that Mr. Cooper and Mrs. Avery had told him that Dr. Avery would be acquitted, and that, to use his own expression, they would then take "the effort of the law" upon him, which would result in his being put in the penitentiary for twenty years, and be branded and cropped; to that he replied, that no such conversation had occurred at all. I asked him the question, and repeated it several times, as to whether anything had been said to the negro about his statement being false, or, as to the consequences of his testifying, and the reply of Mr. Cooper was several times and emphatically, that no such statement had been made.

Cross-examined by Mr. McMaster. Q. Have you not received credible information that these outrages upon Postles and Postle were committed by some other parties?

Judge Bond. That is new matter; and, so far as new matter is concerned, you make him your own witness, Mr. McMaster. We so understand.

Major Merrill. I don't recall at this moment, and I do not think it is a fact, that I have any information upon the subject outside of the testimony given before the court here, and most of which I previously knew of.

Q. Have you any information in your possession at the present time that would be sufficient for you to arrest other parties for these alleged crimes? A. Unquestionably, if I could find them. The persons are those named in the indictment, which, if I am not mistaken, contains all the names except two, and those are the two persons identified by Harriet Postle, and with whom I never had any conversation until a very few days since in this place, and who, I think, were not before the grand jury; that I understand to be the reason why the names are omitted from the indictment.

Q. Are those the only two names of which you have information that were engaged in this crime? A. I believe they are; I cannot state positively, from the quantity of information I have received from various sources, it is possible that certain points may have escaped my memory at the present time.

Q. Since you came down to this prosecution, have you not received information that you are proceeding against the wrong parties? A. No, sir, I have not; if I had, I should have very carefully investigated the matter and called the attention of the District Attorney to the fact.

Q. Have you ever received information of the persons who shot into Governor Fewell's house? A. Yes, sir.

Q. What time did you receive that? A. Aside from the information which has been partly testified to before the court here, some other of the same kind of information was very distinctly and specifically given me by Mr. John Raterree, who was wounded on that night. He mentioned quite a number of outrages I do not now recall, but a good many of those names were unfamiliar to me.

Q. Do you remember him saying that Dr. Avery was not in that crowd? A. Mr. Raterree distinctly said that Dr. Avery was one of the persons who was there. I said to Mr. Raterree that a young man named Parks Wilson was there, and Mr. Raterree denied that, and said he knew he was not there. Among those he named as being present were Ira Jones, Major Avery and Bill McElwee. I think he is the same man that the witness Castle referred to in his testimony. And there was a young man who was called Daniel Mathew; I do not know whether he is the same that has been referred to or not. James Austin's name was also mentioned. Mr. Raterree's statement as to the names was much fuller than I can now give, because the names were unfamiliar to me, and I don't recall them all.

Q. Did you make any note at the time of the names? A. I did not personally, and I do not now remember if the phonographer was there or not. The examination of Mr. Raterree was quite long. I remember Mr. Raterree expressed an earnest solicitude to tell me all he knew about the Ku Klux organization, but when he

came to my house he faltered and prevaricated to such an extent that induced me at last to tell him that I had no desire to listen to him any further; that if he chose to tell me what he knew, I was willing to listen to it; but if not, that I was not disposed to get it out of him by means of a corkscrew. He had not left two minutes before one of my brother officers informed me that Mr. Raterree desired to return and make a full confession. Mr. Raterree then came back and made a very clear and connected statement till he came to the point where he was to tell of this Ferris business, in which he himself was wounded. Those facts I got from various sources, and I questioned him very closely on that point, and, with great difficulty, seemingly, to himself, he was induced at last to tell all he did.

Q. Are you not mistaken about Dr. Avery being in that party? A. I cannot be mistaken; I think a part of Ira Jones' Klan was there; Major Avery's, from Yorkville, and Dr. E. T. Avery's Klan from Ebenezer. There were three Klans engaged in that outrage. I questioned him closely as to those who were present.

Q. Were you informed by him of the cause of the shooting that night, and how it originated? A. If I recollect his purpose in going there, it was to get at a certain negro about the election.

Q. Was there anything about a conspiracy to kill a man? A. I did not hear anything about that.

Q. Do you remember his mentioning the name of Tom Lowry in connection with that conversation? A. His name is very familiar, but I do not remember it being mentioned on that occasion.

Q. Was anything mentioned about a certain tree on the road, which Tom Lowry had passed in going to his plantation? A. I don't recollect anything of that kind, and I am very sure it could not have been the case, for I should have recollected so marked a circumstance. That fact would have fixed it in my mind.

Q. Will you now recite the occasion of the shooting that night at Ferris? A. As explained by Mr. Raterree it was this,--and I repeat now only my recollection of the statement. A party, I think he said, of forty or fifty or more, had assembled in the old field, near Ebenezer. In reply to a question as to their purpose, he said they had no intention of interfering with so reputable and nice an old gentleman, but were going to take out a negro for something about the election. He didn't distinctly state what it was, and whether he knew or not, I could not gather. At any rate, he did not tell. He said that the party went up to the house, some of them dismounted, and others remained at a little distance from the house; I don't recollect he stated whether the firing first commenced on the house or not; my impression is that Ferris fired the first shot at them. He went on to say that some of the party, without telling who, had gone into the yard, and attempted to get into the house for one of the negroes; that a good deal of disturbance followed, in the course of which there was a considerable amount of firing from the Ku Klux party, in which he was wounded. Whether he said that Ferris fired first or not, I do not recollect; but he did say that Ferris fired, and that one of the shots struck him in the cheek, and made quite a deep gash, and he said he instantly retired, for that had given him a sufficient dose of Ku Kluxing.

Q. Did you cause the Rev. Mr. Cooper to be arrested? A. I made the affidavit upon which he was arrested.

Q. Who else did you cause to be arrested in regard to that matter? A. No one.

Q. Did you have any other person indicted? A. I cannot say that, but I gave the information to the United States Attorney, and I suppose he has sent witnesses having that information before the grand jury, and I understand parties were indicted.

Q. Who were they? Mr. Corbitt. It is a matter of record. The Rev. E. Choper, Mary Avery, Lizzie Chambers and Kizzie Avery are indicted for the intimidation of Isaac A. Postle.

The prosecution announced that they here close the case on the part of the United States Government.

ARGUMENT OF MR. M'MASTER.

May it please the court, and gentlemen of the jury: It has been said by a great man that from very early times

In Great Britain a man was entitled to be tried not by judges, but by his fellow-subjects. That great privilege of the jury, which is called the palladium of liberty, is descended to all countries which have received their laws from England. England herself, however, in the management of her colonies has departed from that mode of trial; that is, they have followed the forms but they have in some cases destroyed the spirit and the intention of the jury law, which was to allow citizens to have a full and fair investigation of their cases; and in Ireland, until the last few years, the jury, instead of being the bulwark of defense of the rights of citizens, has been made the instrument of conviction. You may remember the case of Mr. O'Connell, one of the greatest patriots and one of the greatest men that Ireland ever produced. The authorities in Dublin convicted him, as they had convicted hundreds before. Mr. O'Connell was a Catholic. The question was between the Catholic and the Episcopal Church of England. In Dublin the juries were so arranged that every man who sat upon them was an Episcopalian. Mr. O'Connell was convicted.

It was the custom of the English court, whenever there was a conflict between races or individuals, when justice could not otherwise be done, to select six men on one side and six on the other, as Mr. Macaulay illustrated in one of his speeches.

Mr. Corbin. I don't notice the defendant in court; I have just asked the counsel where the defendant was, and the reply I received was, that was for me to find out.

Mr. McMaster. I repeat it now.

The Court. Where is your client?

Mr. Wilson. I understood, may it please the court, when we adjourned on Saturday night, that Dr. Avery had gone to see his family, and that he would return to-day.

The Court. Do you expect him back?

Mr. Wilson. I had no interview with him; I expected him to return by the next train; I knew nothing save from the information I have received from Mr. McMaster.

The Court. What time is the next train due?

Mr. Wilson. At 2.30, I believe.

The Court. Do you know where your client is, Mr. McMaster?

Mr. McMaster. I beg the court will excuse me from answering that question.

The Court. Had you any knowledge from your client that he was going away?

Mr. McMaster. I hope the court will excuse me from answering.

The Court. The clerk will lay a rule on Mr. McMaster to answer the question or show cause why he should not be thrown over the bar.

The Court (addressing Mr. Corbin). Do you propose to have the bail forfeited?

Mr. Corbin. I do, sir.

Mr. McMaster. Will the court allow me to offer a suggestion?

The Court. We would rather you answer the rule.

Mr. McMaster. I hope the court will appoint a time in which I can answer; your Honor will not, certainly, demand an immediate reply to a grave question of that sort; I am to show cause why my name should not be stricken from the roll; you certainly will give me time, at least, until to-morrow, to consult with counsel, on a motion of such importance as that.

The Court. Mr. Clerk, call the prisoner.

The clerk called in open court, three times, the name of Edward T. Avery, to which no response was made.

The Court. Forfeit those parties' bail, Mr. Clerk.

Mr. Corbin then made the following motion:

United States *vs.* Edward T. Avery *et al.* The defendant Ed. T. Avery, in the above entitled cause having failed to appear and attend court, from day to day according to the stipulation of his bond, and having been three times called, and not answering, it is, on motion of the District Attorney, D. T. Corbin, ordered, that said bond be forfeited, and that *acres facias* be issued thereon.

(Signed)

GEO. S. BRYAN,

U. S. Judge for the District of South Carolina.

January 1, 1872.

Mr. Corbin said: There is some little uncertainty in the mind of the Attorney General and myself, as to the proper course to be pursued. We have exhausted so much time, trouble and expense in the prosecution of this cause, that if it is permissible to go to the jury with it, we should like to do so. Whether, if we pro-

ceed to a conviction, the proceedings would not be invalid, is somewhat uncertain. Before putting the case before the jury, for their conviction or acquittal, we would ask the court to adjourn, to give us time for consultation. The court then adjourned until Tuesday morning, 11 o'clock.

## TWENTY-SIXTH DAY'S PROCEEDINGS, JANUARY 2.

The court met, pursuant to adjournment, Hon. H. L. Bond presiding; Hon. G. S. Bryan, Associate Judge.

The large Library Hall, in which the government trials are held, was unusually crowded—the galleries according to rule, being exclusively occupied by colored persons of both sexes.

Mr. Wilson said that the Rev. Robert E. Cooper had this morning been arrested upon a bench warrant; but, as he had previously given bail to United States Marshal Poinier, at Yorkville, in the sum of two thousand dollars, he moved for his release from confinement.

Mr. Corbin said that the fact of Mr. Cooper's having given bail was not known to him. He had no objection to offer to his release.

It was so ordered by the court.

Mr. Thomas Bell moved for the continuance of the case of William Mowry, filing affidavits to show sufficient cause.

Judge Bond. The case will be continued.

### ARGUMENT OF MR. CHAMBERLAIN.

Mr. Chamberlain said that, since the adjournment of the court yesterday, the District Attorney and himself had examined the question, as fully as the time had permitted, as to the proper course to be pursued upon the flight of the prisoner, in the case now before the jury. There was no doubt that in cases of felony the prisoner must be present to plead to the indictment, to confront his witness and to be present at the rendition of the verdict. In cases of misdemeanor, the prisoner may, under certain restrictions, be allowed to plead by attorney and be absent even from the judgment and the passing of sentence.

The present question was whether the prisoner, after he had pleaded and had conducted his case thus far—after confronting his witnesses and examining them in his own behalf—whether the prisoner, in his own wrong, and of his own motion, and with the obvious purpose of escaping from the trial and jurisdiction of the court, could absent himself and flee from the officers of the court. That was the question.

The authorities furnished one example precisely similar to the present case. Instances were on record where a request had been made by a prisoner that he might not be compelled to be present in court to listen to the verdict, and this in gratification of his own feelings; but, in such cases, the courts, in England and in this country, insisted that he should be present.

In such cases, the prisoner was within reach of the court and could, on its order, be brought to stand before the jury when rendering their verdict.

The case which appeared exactly parallel to the present one occurred in the State of Ohio, when the prisoner was being tried on a charge of counterfeiting. In the progress of the trial the prisoner ran away, and the precise question involved in the present case arose—*can the trial proceed to a verdict?*

Mr. Chamberlain read the passage from the chapter in "Bishop's Criminal Procedure," on the "presence of the prisoner in court," sec. 687;

showing that in the case of felony or treason, the prisoner must be present in court, and that where the prisoner, in his own wrong, voluntarily runs away and escapes beyond the reach of the officers of the court, the court may proceed to a verdict.

Mr. Chamberlain then referred to a case in 1st Bailey, p. 651, the State vs. McKee, presenting a case different in its circumstances from the present, but tending conclusively to show that the jury should not be discharged without rendering their verdict.

In the case referred to the defense had concluded their argument, and it came to the knowledge of the solicitor, that the foreman of the jury charged with the case had said that he would not convict any white man for the killing of a negro. The solicitor claimed the right of entering a *mot. pro.*, on account of the statement made by the foreman of the jury. The question arose whether, under these circumstances, the jury could be discharged, or whether it must proceed to a verdict. That brought up the whole question of the circumstances under which a jury could be discharged. The case was argued by the circuit judge, and taken by appeal to the Appeal Court, where the decision was rendered by Judge O'Neill.

The decision of the English courts, of the Federal courts, and of the State courts were given, and the conclusion reached that only on the following grounds could a jury be discharged. First, the illness of the prisoner; second, by the illness of one of the jury or court; thirdly, the unavoidable absence of one of the jurymen; and fourthly, the impossibility of their agreeing on a verdict.

If that be the law, continued Mr. Chamberlain, they were shut up to the necessity of giving this case to the jury; there was no ground upon which this court could discharge the jury at the present stage. The practice of the English and American courts insisted upon the corporeal presence of the prisoner, and if after being present and pleading and listen to the evidence for and against him, he made his flight, there was sufficient authority for the jury to proceed to the verdict.

As to the other question whether this prisoner could claim a formal acquittal in case of the discharge of the jury at the present time, there was no doubt that he could not make that plea, even were the jury now discharged. The decisions of the Supreme Court upon that point were clear that it is a decision of the jury by acquittal or conviction that constitutes one in jeopardy.

Mr. Wilson. In this case I deem it proper and feel it my duty to leave the question entirely with the court.

Judge Bond. We think it proper to proceed with the trial, and when the verdict is given any question may be argued on motion before judgment.

#### ARGUMENT OF MR. McMASTER.

Mr. McMaster continued his argument for the defense as follows.

Yesterday I described to you the intention, spirit, and powers of the jury, and attempted to show that in Ireland, in all the State cases, that the jury instead of being the palladium of liberty, was an engine of oppression. In our country, that professes to have more freedom even than Great Britain, it is unfortunate that there has not been a provision made by Congress to provide against similar outrages, to those which have been perpetrated in Ireland.

What do we see here to-day? The law requires that in making up a jury for the Circuit Court, that there shall be one hundred persons selected by three assessors from different parts of the State, good, responsible, intelligent and reliable men, who are fit to be jurors, and from them a certain number shall be drawn to serve as the jury of this court. It is well known that the proportions of persons entitled to vote, and consequently able in this State to sit on the jury, is in the proportion of two white to three colored persons. Does this jury exhibit that proportion? There is another fact that must strike every impartial observer, and that is that this is a political question before us, in some of its aspects,

We have been told by a distinguished authority that you can count the white Radicals in South Carolina on your fingers, but the smaller number of whites that are on this jury are nearly all of them of that class. Now, gentlemen, I want to be very plain and honest with you, for I consider that you occupy a very responsible position, a position that would require great effort for you to vindicate justice and do justice. This jury is infinitely worse than a jury of Episcopalians trying the great Irish orator and patriot, who was a Catholic. It is a great deal worse, for there are undoubtedly on this jury eleven men who are strong partisans, who are opposed to my client, Mr. Avery, in political faith. But it does not rest there. I see here nine colored men selected by the prisoner, from the panel, as the best, when the very outrages with which my client stands charged, were perpetrated on colored men. Can you be other than naturally indignant at these outrages? Will not your hostility be naturally greater than a white man would feel? Therefore it is that I say the world has never seen a greater outrage than in the jury that is now trying this question. If Mr. Macaulay said, with regard to those Irish trials, that in every case of indictment for state offenses there was a reasonable certainty of a verdict being against the prisoner, in this case the chances of such a verdict are increased a hundred fold.

Now, gentlemen, it seems to me that if I were a colored man I would rejoice in the opportunity of sitting on such a jury. I would rejoice in the opportunity of exhibiting to the world that it was for justice and for freedom; that the black man, despised as he has been in the past, has now put himself in a position where he can vindicate his character and show that a black jury may be superior to an Irish jury. He has an opportunity of rating above his prejudices, and doing justice not only to a political enemy, but to a white man, who is charged with being connected with a conspiracy whose object was to drive the black man from the soil of South Carolina. Gentlemen, that is your proud position to-day. Therefore, it is, I beg and entreat you to lift yourselves above prejudice, and do justice to a political enemy, so that in future times your conscience can never reproach you, and that the world may say of your action it was well done.

Gentlemen, I know I stand here to-day under the shadow and displeasure of the court; I stand here suspected, possibly, in Mr. Avery's absence, I do not care at the present moment to vindicate myself. This is not the fitting opportunity. I am aware that I stand here fighting against a prejudice in your minds in favor of the guilt of Dr. Avery, from the fact that he has run away. Gentlemen, I beg you to be careful how you allow that prejudice to rest in your minds. If you would judge the case fairly I ask you to put yourselves in the position of my client, ask yourselves what you would have done under similar circumstances. That I say, is the only way in which you can render a fair judgment.

Now, Mr. Avery has gone; I hope he is in a country that is freer than this, by this time; he gave his bond to attend this court; he came down here bold, defiant, and confident, as he always is; ready to fight any antagonist in the daylight, never in the dark; he came here with confidence, conscious of his own innocence, but he did not know the jury that was to try him; he saw that at least eleven men out of the twelve were strong partisans and politically hostile; but such was his confidence in his cause, that in the selection of the jury, when a jurymen was announced to be connected with the Republican paper of this place, instead of refusing that juror, he said, I like that man's face, I believe he can do me justice; the case went on, and he was horrified and astonished at the tales, the surmises, the suppositions, and positive gabbles the prosecutions introduced, and by which they sought to give horror to the scenes, and to show how terrific they were; and when he saw the desire of the prosecution to connect him with the horrid and unnatural crimes, committed by the occurrences of creation, by the coal field men of York County, men that were never of any use to any country, either in times of peace or in times of war; when the desire was manifested to inflict upon a gentleman, of York District, of which he was a good representative, such a stain, and stamp him with infamy, and when he knew that three months would not roll by before the parties who committed this atrocious outrage will have honor enough to vindicate him from all complicity; when this fact came to his knowledge

from one of the men who participated, and when he saw the probability of ten years in a penitentiary, I ask, can any man, under such circumstances as this, blame him for going "where the woodbine twineth." Put yourselves, gentlemen, in his place, and say what you would have done.

His Honor, gentlemen of the jury, in the discharge of his duty, put an old man in the penitentiary for five years, because he did not exercise his power and stop these outrages. Great goodness! Is such a thing possible? How is it possible in a country desolate by war, where the people are so impoverished as to be unable to leave their place; how can men be held responsible for the actions of an entire community? Are these men to be punished for not going out of their way to stop wrong doings and outrages, when every sentiment of honor and justice is being outraged in South Carolina; where bribery, corruption and stealing exist, from the highest to the lowest officer of the State? Has not the debt of the State been increased in three years, from five to at least twelve millions of dollars, according to the last showing? And yet not a school house built, not a court house built, not a railroad built; nothing done to elevate the race, but everything to impoverish and to put shackles upon our industry and commerce. The court said to this old man you should have stopped these things, that did not even occur in his district! But this seems to have made no difference; you should have stopped it, though it happened twenty miles away. You should have known it, and you should have prevented it. Does not this show how difficult it is to judge of the State of South Carolina, by a knowledge of what may exist in Florida, or Maryland? We have not yet slipped down into a condition of order, quiet, and peace, from the recent war which devastated our State. War permits license and outrage that would not be tolerated in time of peace. It is therefore impossible to judge about the condition of South Carolina by what may be found in New York, Pennsylvania, or Maryland.

Now, I would call your attention to the class of witnesses by which it was sought to convict my client. I do not accuse any of positive lying; but witnesses have been upon the stand who are incapable of telling the truth. They speak of events that happened many months ago; their memory is confused; facts are intermixed; imagination often supplies the plea of fact, and their whole statement is confused and utterly unreliable.

Let us look at the alleged crime with which my client stands charged. He is charged with raiding on Sam Sturges and for whipping Postle on the night of Friday, the 1st of March. He is charged with being a Ku Klux. He undoubtedly belonged to an organization in 1868, as did almost everybody in that section of country at that time. Now, I don't care what they called the organization then—Ku Klux or anything else—it was not illegal; no more so than the Union League, and there was no law against it. A man might have been a member of that organization and yet have nothing to do with the outrages that have been perpetrated since the enforcement act of eighteen hundred and seventy; of these he is "Scott free." Mr. Gunthorpe says that Mr. Avery was initiated in 1868; admit it; Mr. Gunthorpe says there was no constitution that he knew of, and there has been no constitution proved to the organization that existed in 1868. The purpose of that society, as he says, was "opposition to Radical mis-rule." It was not illegal; for the thirteenth, fourteenth, and fifteenth amendments, and the acts for their enforcement, were passed after that. The organization that then existed did not oppose these amendments, but only spoke of opposition to Radical mis-rule. We have moreover proved, by a number of witnesses, that this organization broke down by its own weight. It had subverted its purpose; and besides, it has been proved that it was merely a society for home protection. It may have been foolish; there was no occasion for alarm; for the disposition of the colored man is not to hurt anybody.

I protest in the name of humanity against the action which has been exhibited by the prosecution in this case; I enter my solemn protest against it; I come to you, gentlemen, to vindicate justice, and you gentlemen (addressing the counsel) before many months have rolled over your heads will say that I was right; you, gentlemen of the jury, I trust will bear in mind that it is far better that many guilty men should escape, than

that one innocent man should suffer; save the innocent; punish the guilty; show that you can appreciate justice; show that you can rise above prejudice; show that you are worthy to be free, and worthy to be jurors in any case, whether trying white or black. But I imagine that five years will not roll by before my friend, the Major, will repent of any such resolution; for I cannot but believe that he will arrive at the conviction, that the present measures are inhuman and unjust; these measures cannot surely be carried out in a spirit of revenge; revenge is an unholy passion; gentlemen, show that you are equal to the position; do justice, vindicate your character, show that the black man can rise above prejudice, show that they deserve to be the pillars that support the country; that they deserve to be on the jury to help support the palladium of liberty.

Gentlemen, there may be some of you who know that I sympathize with Mr. Avery. Let me say that I hate a low, vile man that does his deeds of darkness in the night, as I rejoice in a brave, open contest and a fair surrender, and I believe in then shaking hands afterwards, as brave men always do. I know, gentlemen, that we cannot judge of military men as we can of men of peace. Men who are educated to conditions of strife and war are unlike men of peace. The conditions of war are unlike the conditions of peace; but your military men, even in time of peace, are somewhat governed by their notions of war; they seem to think it necessary that people should suffer, that even women and children should suffer sometimes, assuming it to be necessary in the general progress of events. It may be that the sympathies of heroes who participated in the war of the Pigeon Indians may have justified the ripping up of poor Indian women, and decapitating Indian children and filling them with fear and terror. They seem to argue that it did not make any difference if an old negro woman and a kind and intelligent nurse should be charged with perjury and indicted and thrown into prison. It makes no difference if a man like Mr. Avery, known and respected in his community, even should be innocent, that he should be punished. The higher the standing, the more striking the example. How delightful it would be to have White Hampton as a vicarious substitute for all the gentlemen of the South, and put him in the Penitentiary for ten years!

It is said that oppression sometimes makes a wise man mad, and it may have made him mad; for has he not had dire oppression in his case, as he lay in a crowded, filthy, poisonous jail, incarcerated in a cell many days while lying on a sick bed, bleeding from wounds and paralyzed with cold? It is then in the confidence of his innocence that he sends for Uncle Postle, who had charged him with whipping him; sends his wife to find out Postle and talk to him. The wife's pastor intercedes for the innocent husband; the old servant and faithful nurse too,—and all this is constrained into additional conspiracy. An old, faithful negro woman, sixty-six years of age, is charged with intimidating Postle! Gentlemen, is not that cruel, is it not oppression? I had hoped that the Government prosecutor would have thought better than to proceed with such an act as that, but there is not a particle of any such proof in God's word.

Mr. McMaster then adverted to the testimony of the Rev. Mr. Cooper, contending that there was no attempt to intimidate the witness Postle, and that all his assertions to that effect were but the creations of his own imagination. Mr. McMasters dwelt at some length on the testimony of Lizzie Chambers and Lizzie Avery, contending that they established, beyond controversy, the fact that Mr. Avery was at home on the night of the alleged raid.

Gentlemen, he continued, I know I have made out my case to any unprejudiced jury; and I know that no jury on the face of God's earth outside of such a jury as we are obliged to have here could convict with such evidence as is before you; and I beg of you not to let the absence of Mr. Avery affect you; do him justice, for he is a bold, kind-hearted, noble man as ever walked on the face of the earth; he fights no man in the dark, but he is always ready to fight any man, with sufficient cause, in the day time. But he is put up here to indulge in midnight raids. He is known in that entire range of country to be an honest, bold and brave man. He is a

man to fight against odds, not to raid on an old man like Sturges. And yet these poor, ignorant and credulous witnesses connect him with that conspiracy and speak of recognizing his lame hand under circumstances that make it an utter impossibility. He is described by witnesses as adjusting the rope over their necks, when the condition of his hand and his utter inability to use it in such a way shows the entire inconsistency and impossibility of much that was testified to in this respect. Gentlemen, you cannot rely upon testimony of this character; besides, it is not in accordance with the admitted character of Mr. Avery. You can tell, from his impetuous look, that, if he went on a raid, he would go in an entirely different manner. If any fighting was needed to be done, he would have done it; but these raids are not in his style. If he had been a Ku Klux, he would have been known in that whole country as such. Weak-minded persons may well have become alarmed. Mr. Gunthorpe left that neighborhood, and he tells us that, though, on one occasion, he returned for a day, he heard no more of it. Had it been in active operation, he would most certainly have known of it. That is my reply to Dr. Avery being connected with this alleged conspiracy. The truth is, there was no harm in it. The idea that he hung that poor old fool Sturges and whipped Postle! You cannot convict Mr. Avery of such an offense, unless you are certain he was there; and I hope you will put far from your minds the idea that he was there.

#### ARGUMENT OF MR. WILSON.

May it please the court and gentlemen, of the jury: Though the departure of my client has given me a sudden and unexpected weight to carry in making his defense, it shall not deter me from an earnest effort to discharge my whole duty, and I hope you, gentlemen of the jury, will not allow it to unduly prejudice your minds, for it is not necessarily a proof of guilt, but may reasonably be attributed to a feeling of despair that he was drifting to that maelstrom from which none, none! have as yet escaped.

Dr. Avery is indicted for a general conspiracy to violate an act of Congress passed May 31, 1870, and what is the first proof adduced by the government? That he was a member of an organization in 1868. Does it not strike you, gentlemen, as something beyond the range of possibility, that a man can conspire in 1868 to violate a section of an act which was not passed until nearly two years afterwards. Besides, it is proved in the case that that organization was solely for home protection. I admit that there were many features in this organization of 1868 to remind you of the Ku Klux organization of 1870-71, that has been proven to have had existence. For instance, this order in 1868 had an oath, it had disguises and the members were required to be armed, in which it resembles the Ku Klux organization, are clearly proven to have existed; but while there are those resemblances there are just as marked differences. There was secrecy, it is true; there were disguises and there was an oath; but it does not follow that it was anything more than an organization for self-defense. So much for any argument that may be drawn from the character of this organization of 1868; but the government does not stop here, and I am very far from being through with the argument. The government says: You were on a raid six, on the night of Friday the 1st of March; you were in a Ku Klux gown, committing acts of atrocity upon old men, women and children. Gentlemen, I admit it, if he was there on the night of the 1st of March, 1871, it is proved that he belonged to the organization. Now comes the great question in this case; was he there?

The first witness offered by the Government was Abram Broomfield, an old man; a man who seemed to be deaf; it was with difficulty that he could hear me; I had to raise my voice to a pitch that would fill this whole building to make him hear me, although he was standing within a few feet of me. What is his testimony? He was sitting in the fence corner within ten steps of him and he heard Dr. Avery's voice. It is remarkable that he could have heard Dr. Avery's voice ten steps off when it was so difficult for him to hear on that stand. Next comes his wife Emeline Broomfield. She doesn't swear by his voice, but she knew him by his beard. I think, gentlemen, you would not convict any man because he had a beard that the witness thought was his, for many beards are alike. But she says she knew his hand—she saw that hand when Dr. Avery had the line with both hands putting it over Sam Sturges' neck. Now, what does Sam Sturges swear? He swears that the man that put the rope over his neck was a black man, and his name was Howard White. Now, gentlemen,

men, she said something else, that he grasped it; with both hands; you felt that hand, you saw it, you heard what Dr. Tolley, a distinguished physician, of Columbia, testified to, that it was perfectly useless, no muscular power there. It was impossible for him to have grasped that rope with that hand. The next one is Harriet Postle, the wife of Isaac A. Postle. She says she knew him by his warts and by his hand. She caught his hand; that Dr. Avery had hold of the rope in both hands, and while she was trying to pull it down, she caught the hand. Dr. Avery could not have had the hand in that position. The next witness is Isaac Postle. He says, he knew Dr. Avery by his being common in his talk. Well, gentlemen, I don't think that any jury would be satisfied that it was Dr. Avery upon that sort of evidence.

Well, now here is the whole testimony and if you convict Dr. Avery, you must do it upon that testimony, and if our defense stopped here, would you feel that it was right on such uncertain, flimsy and conflicting, contradicted evidence as this, to send a citizen of our Carolina to the felon's cell and the felon's doom; would your duty allow you to do it? Would the practices of the juries of the Anglo Saxon race of the last two hundred years, wherever that race has been known; would the practice of your own countrymen, since you have been clothed with the right of American citizens; would you find precedents there to do that where the evidence is so conflicting, so uncertain? But gentlemen we don't stop here; has not Dr. Avery proven to your satisfaction, that on the night of the first of March, 1871, when they say he was on this raid of atrocity, this contemptible cruelty, this trampling babes under feet, and mashing the heads of women; outrages of disgrace to the human race; when they say he was upon that low work, he was by the side of his wife and sick children. You saw Louisa Chambers; you saw how she testified, and I must say that never since I have been at the bar have I seen a witness subjected to so thorough, so protracted an examination, and I have never seen a witness come out of it more thoroughly intact and unscathed; there was no ingenuity that the distinguished counsel could exert that could make her contradict herself. She says that, on that night, when Samuel Sturges and Postle were raided upon, that Dr. Avery was at home; that he went to bed about between nine and ten o'clock; that his child was sick; that it was her habit to sleep in one of the out-houses, but that night she slept in the house on account of the sickness of the child. Mr. Cooper tells you that he knew the child was sick; old Kizzy tells you that the child was sick; and Louisa was in the house that night.

Gentlemen, I think the evidence of this alibi is so conclusive that you cannot entertain a reasonable doubt about it; and I would respectfully say to you that if there is a reasonable doubt left upon your minds as to Dr. Avery's guilt, then, on your sworn duty, you are bound, as a jury, to render a verdict of not guilty.

#### ARGUMENT OF MR. COBBIN.

May it please the Court and gentlemen of the Jury: The case before you is certainly a remarkable one. One feature in it, at least, it has never been my experience to meet with before any court. We have, in the regular course of the administration of justice, indicted a defendant who has been informed of the charges against him; he has been summoned to answer; placed before the court and the jury; enters his plea of not guilty; sits by and selects his jury; sits by and hears the testimony; and then, in the darkness of night, flees. Now, gentlemen of the jury, I say to you that in my judgment, that is a fact to be considered by you. It is something that has occurred before your eyes, in the presence of the court, and I think, gentlemen, and I believe that you will agree with me, and so will the rest of mankind in his county, or in the country anywhere when they hear the fact, that a flight under such circumstances, is a confession of guilt.

But, gentlemen, we do not rely simply upon the conduct of Dr. Avery. Without noticing the argument of my friends on the other side, except incidentally, I propose to call your attention to the testimony. First, has this offense been committed? second, who committed it? We showed to you the existence of an organization in 1868; Dr. Avery, by his counsel, is admitted to have been a member; an organization of which, it is said, that "any member divulging or



causing to be divulged, any of the foregoing obligations, shall meet the fearful penalty and traitors doom, which is death! death!" My friends on the other side talk about a peace society. Their witnesses say "it was a society for mutual protection, but we didn't see any use for it, and didn't go any more."

There is a little piece of testimony that the defendant's counsel insisted on drawing out from Col. Merrill, they insisted upon his telling what John Raterree, a member of the Klan of 1868, told him, and he says John Raterree, of Rock Hill, told him that Major J. W. Avery, the chief of York county, Dr. Avery, his brother, and Irrel J. Jon, a chief of the Klan at Rock Hill, went on the raid on Mr. Ferris with their Klans, and Governor Ferrell testifies that when they came to his door he knocked them down with a file shovel, and Dr. Avery was one of the men that he knocked down. Gentlemen, don't we find in this organization of 1868—in this conduct of the three Klans in 1868, of which this defendant was chief of one—a strong disposition to go on raids? Don't we find this wonderful representative—this gentleman—may God spare the name—going into this same business? Don't we find him covering himself with a mask and sneaking around in the night with his mask and attempting to shoot colored people in 1868? Is this an open fight—is this a broad daylight fight, where gentleman meets gentleman, shake hands and shoot at each other, as he counsel on the other side said was the conduct of Dr. Avery? I tell you, not gentlemen. We find this scoundrel—this coward and murderer—this everything that is bad—all demonstrated by their own testimony—proving to the world that he is just equal to these Ku Klux operations.

Gentlemen, you have heard the testimony of Lawson B. Davis, who joined this infamous organization in 1870. He says he was told that it was a society for mutual protection. Gentlemen, was there ever a word abused; so entirely perverted. Was there ever damnation so foul, covered up by as pleasant an appellation as these words, "mutual protection," "home protection"? Mr. Davis says when he got inside of the Klan he found that it was an organization for what? To protect anybody? No; but to destroy the opposition party; first, by writing and warning the member; second, whipping them; third, compelling them to leave the country; and fourth, killing them.

Mr. Gunn says the object of the organization was to kill and whip the white and colored Radicals until the Democratic party should be triumphant in that country. Go up in York county and call the name of Charley Good; will anybody answer? Go and call the name of Tou Rountree; will anybody answer? Call the name of Anderson Brown; will anybody answer? Call the name of Jim Williams; will anybody answer? No, gentlemen, these prominent colored men are dead, murdered by the Ku Klux Klan. Gentlemen, if the organization ever existed, to be handed down through all time as excelling in its atrocities the savages upon our frontier, or the conduct of the people of India, or the atrocities of the savages of the islands, that organization is the Ku Klux Klan.

Now, gentlemen, what is the evidence that connects this distinguished son of South Carolina—I say distinguished in derision, gentlemen; I don't think he is distinguished except for his crimes. What is the evidence? You have the first evidence in his flight. If he had been an innocent man, he would have sat here, and if you found him guilty, he would have borne it; he would have attempted to show to the President of the United States, that he was not guilty; and if the evidence was forthcoming in three months, as was said by the counsel on the other side, there is no question that he would have been set at liberty. But, instead of sitting here like an innocent man, and awaiting the result of his trial, he flees in the night, God only knows where.

Sam Surges says he knew that little crooked hand of Avery's; could he be mistaken? Dr. Avery has presented his hand to you, for which I thank his counsel, and they have put a physician upon the stand to swear that that little crooked hand is permanently fixed in one position; that his fingers are doubled, and that it will never change its position, whether it is up or down.

Mrs. Broomfield says, "I saw that little lame hand and I at once knew it, and I recognized his whiskers." What is the next proof about him? Why, here is old Apostle, an old man, celebrated for his piety. He is a preacher, and his demeanor upon that stand, gentlemen, in my judgment, showed that he was a great deal nearer following that Master—"Christ and Him crucified," than some other people who were upon the

stand. He says—mind, he is not a swift witness; he does not say I know Dr. Avery was at my house;—but, "I think he is the man; I recognized his voice, because it was a common voice to me. I had heard it so often, and when he says "we are men of peace"—after they had hung the old man up and taken him down—"we are men of peace and justice"—hanging a man without judge or jury,—and "we are men of peace and justice."

The other side send a minister after this man; Mrs. Avery goes after him; they get him to swear to an affidavit written by the reverend gentleman who never preaches against Ku Kluxism, and the affidavit says, in effect: "If your evidence is true, then I am mistaken."

What does Postle's wife say? She knew Dr. Avery by his hand, which she grasped. I tell you, gentlemen, no man or woman living who has grasped that little lame hand would ever be mistaken about it.

But, now, let us turn to the other side. Why, the gentleman on the other side (Mr. McMaster) said that you are the most wonderful jury that was ever got together; that such a jury is not recorded in the history of time. But he hopes that you will be able to tell yourselves on this occasion and—what? Do justice! In God's name, gentlemen, that is just what we want you to do. But, gentlemen, he didn't intend it in that way; he intended it as a slur upon you, and everybody so understood it. You are all, he says, members of the opposite political party to which this gentleman, his client, belongs; hence, you cannot do him justice—you are prejudiced. How does he know that, gentlemen? I suspect that he weighs you in his own insignificant balance; he judges you by himself. I say to you, gentlemen; it is not harsh for me to say so, when a gentleman can stand up before a jury and talk to them as he talked to you: That, because you are of the opposite political party, (and I don't know whether you are or not,) that you cannot do justice to his client; that it is a political question. Great God, gentlemen, is it politics to kill people and to whip people? If it is, let us send this man to the penitentiary who works politics in this way and annihilate the political party that attempts to enforce its principles in that way.

Now, gentlemen, we come to another interesting matter in which the ministers are engaged. I wish I could find the ministers of York county in better company. It is only a day or two since there was a long article in a New York paper defending the Ku Kluxing in York county, from Rev. Mr. Latham, of York county. Only a day or two since we saw a long letter in the Charleston News from a Rev. Mr. Winkler. He says: "To anybody who knows the facts about this Ku Klux business, he would not be true to his God or his country if he wished well to these prosecutions." What do you think of a minister of this kind? What have you to say for a man who preached Christ and Him crucified—had a commission for that—who says: I never said a word against Ku Kluxism. Whipping, killing and murdering could be done and I say nothing about it, because I don't preach politics. Is there any surprise that Ku Klux could exist in York county?

The question of whether Dr. Avery was in this conspiracy is to be determined by you, by the testimony given you in this case; and I think, gentlemen, that I am not doing myself injustice or you wrong by saying that I think you will agree with me that the testimony in this case and the conduct of the defendant and his counsel show you, equally, that he is guilty.

#### THE CHARGE

of the Court was as follows: "Gentlemen, you have heard the Court's directions to the other juries, and the Court does not think it necessary to give you further directions."

The jury retired, and after the lapse of fifteen minutes, returned a verdict of GUILTY.

During the absence of the jury, some prisoners were arraigned, who pleaded guilty to the charge of general conspiracy, and made a confession in open court, as follows:

#### GIBBON CANTER

said he lived in Spartanburg; belonged to the Horse Creek Klan, which had about twenty members; he was sixty-six years old; was a farmer, and had a wife, but no other family; Alfred Harris was Chief of his Klan; Jesse Tate, Chrusenberry Tate, Davie Collins, Billy Scurgus, Judge Edwards, King Edwards, and Shuford Blackwell were members of his Klan; Frank Rea initiated him.

#### MR. TURNER PHILLIPS

said that he belonged to the Doe Pond Klan, of which Franklin Rea was Chief; he joined sometime before Christmas in 1870; the Klan had about twenty-five or thirty members; he was present at four meetings; the Klan had been on two raids that he knew of; he was on a raid on a colored man named Andy Fernandez; they struck him a few lashes apiece with switches; Fernandez worked in the iron works; never had one man any harm; he wasn't ashamed for having whipped Fernandez; was sent by the committee of the Klan to do it, and of course was compelled to do it; he joined the Klan under two magistrates in North Carolina, Cleveland county, and asked if it was a violation of the law to belong to the Klan, and they said it was not. They were Harvey Allison and Langley Sams n. he was a member of the church; never consulted his pastor about the Ku Klux; his Klan whipped Ben Phillips, colored, his wife and daughter very severely; his daughter was 15 years old; nearly all the white people of Spartanburg county belonged to the Klans; if they didn't go into it willingly they were forced into it. If punishment will put down this thing I am willing to be punished my part.

#### D. LEWIS JOLLY

said that he belonged to the Limestone Klan; Banks Lyle was Chief of the county; he has run away; was on a raid to take a white man out of jail in Spartanburg, who was sentenced to be hung for killing a negro; also on a raid when Mary Bean was whipped; took her out of bed and whipped her a little; whipped her for breaking the peace between a white man and wife; didn't whip the white man; the white man's wife got the Klan to whip her; he was a member of the Klan, and was one of these big wealthy men.

#### W. S. BLACKWELL

said that he was sworn in, but the Klan wouldn't receive him; he had tried to recognize the horse tracks of the Klan, and had been sentenced to death by the grand Klan.

### TWENTY-SEVENTH DAY'S PROCEEDINGS, JANUARY 3.

The Court met pursuant to adjournment, Hon. H. L. Bond, presiding; Geo. S. Bryan, Associate Judge.

The court room was crowded in every part, all the standing room being occupied.

Mr. Chamberlain, Attorney General, asked that sentence be passed upon Alexander Armstrong, convicted at the April term of the offense of robbing the mails.

The prisoner, who was a youth of seventeen, was then called before the court.

Judge Bryan in passing sentence said: The court has been very much touched by your unhappy situation and your youth. The excellent stock from which you come has commended you to the most merciful consideration of the court. I esteem it a great misfortune, and when youths of your age are put in the way of such great temptation; when those who do not well comprehend the responsibility of their situation expose them to great temptations, I have felt that it is not well that the government should employ or suffer to be employed those of such tender age. It is for that reason that the court, on its own motion, when you appeared before it were studious to intervene in your behalf, and not to consign to infamy and dishonor a member of a family well known to this State and community. We, therefore, have felt that this is a case where a crime has been committed, perhaps, for want of appreciation of that which you have done, and we are glad to know that the United States in its wisdom and benevolence has provided an institution for those standing in your situation, a place of penitence and a place of reform, where an opportunity will be given for a new life and a useful career. It is in the trust and hope that you will profit by this opportunity that we feel happy in being able to consign you to a house of correction, where you

will be educated and have an opportunity of learning a trade, and an opportunity offered you of a life made respectable by virtuous labor. It is a place where you will be free from any vile contact, and in which you will be incited to honorable efforts for the future.

We trust that the benevolence of the government will not be wasted; but that you will instead of being a reproach, live to become an honor and comfort to your family, and maintain its most excellent name. The sentence of the court is, that you be imprisoned for a term of five years, dating from the time of your confession, and that you be consigned to the Detroit House of Correction.

#### CONFESSIONS OF THE KU KLUX.

William Jolly, in reply to interrogatories, propounded by Judge Bond, confessed as follows:

I live in Spartanburg, and I am about eighteen years old; I belong to the Horse Creek Klan; I joined last spring; there were about fifteen or twenty members in the Klan; we met in the old field; I have only been on one raid; that was on Mary Bean; my brother Louis Jolly was with me; Jonah Vassey, was the chief of our Klan; he is in Spartanburg now I reckon; Zebe Connell was one of our committee men, and so was old Mr. Tait; I joined the Klan because I was afraid they would whip me if I didn't; my neighbors told me that I had to go in it or be whipped into it; I was initiated into the Klan by George Cruggs; he told me I had to join; Louis Jolly, Tom Friers and Membrey Humphreys, were the only ones on that raid that I remember.

#### CONFESSION OF ALFRED BLACKWELL.

Alfred Blackwell having pleaded guilty confessed as follows:

I live in Spartanburg, and I am nearly twenty-five years old; I joined the Horse Creek Klan last March; the chief was Jonah Vassey; there were twenty or thirty in the Klan, I reckon; I was only on one raid, that was on old Ruben Phillips; we brushed him a little; there were seven of us; we brushed him for beating another man's steer to death and throwing it into the branch; 'twas Sam Suratt, who said he did it; Phillips was an old black man; we struck him three licks apiece; I don't know whose Klan it was; I went on this raid, but Shufler Blackwell was in it; I can't write or read, and have no "learning;" I went into the Klan because I was scared into it, and I lay out three weeks for fear, before I went into it; I did not go to any justice or any one else, to tell them I was threatened, because I was afraid that if I went against them in any way I would get a whipping for it; I thought they would be sure to find it out.

Q. Were any of the Justices Ku Klux? A. I reckon they was.

#### CONFESSION OF WILLIAM F. RAMSEY.

William F. Ramsey having pleaded guilty to the indictment, confessed as follows:

I live in Spartanburg and am about 25 years old; I belong to the Horse Creek Klan; the Chief of the Klan was Jonah Vassey; I reckon there was about thirty in it; I attended three of the meetings of the Klan, but there was nothing much done at them; some of the committee would counsel and tell us what was to be done; there never was any order issued for a raid out while I belonged to it; Jed Edwards, Mr. Carroll, Mr. Tait, Sam Cruggs, and Mr. Peck belonged to the committee; I was on the Reuben Phillips raid; we took him and his wife out and gave them three licks apiece; she is about thirty years old, I guess, and he about the same; 'twas about nine or ten o'clock at night; I don't know what we whipped them for; Sam Suratt said that Phillips had killed a steer and threw it in the ditch, and would not pay for it; they told me if I did not go on the raid when I was ordered, that they would go right for me, and that I would get so many lashes, and would have to pay a fine of five dollars; I had been laying out three weeks before I joined the Klan, and my uncle told me I had to join or leave the country; the reason why I did not go to some officer of the law and tell him was because I was afraid to open my mouth about it; I was but a poor ignorant man and did not know better, and would be very glad now to call it back if I could; 'twas said that Rank Lyle was Chief of the Klan; he has left the country, I understand; why did not I leave the country? because I was not able to go; I just came and gave myself up the first chance I got; W. S. Blackwell, Alfred Blackwell, Sam Suratt, John Moore and

Kell Moore, seven of us in all, were on the raid; I felt ashamed after I had been on this raid, and said if God would forgive me, I would never go on another, and I never did, though I was warned to go on some three or four more; I know most of those who joined the Klan did it for self protection; I suppose we did not unite and resist them, because we did not have sense enough; but I know a good many didn't join voluntarily; it seems to me, that men who had good learning and knowledge ought to have taught us better.

Q. Can you read or write? A. Nary a one; I was raised in Spartanburg county.

#### CONFESSION OF THOMAS J. PRICE.

Thomas J. Price having plead guilty, confessed as follows:

I live seventeen miles the other side of Spartanburg; I am twenty-nine years old; Gilbert Suratt swore me into the Klan; I have been on two raids; R. P. Scruggs was chief of the Klan; our first raid was on Mary Beman, and the other was on Charley Fernandez and Jack Suratt; there were three of his family whipped that night, his wife, son and daughter; we took them out and gave them a light whipping with hickories. On the first raid there was a negro woman whipped about one hundred and fifty yards from her house, but that was a light whipping.

Q. What do you mean by that? A. I suppose she had about twenty-five or thirty lashes with hickories; we pulled her out of bed. At the raid on Charley Fernandez, we whipped the two girls of his family; they were grown girls. I joined the Klan because I thought I was obliged to; I was told I would get into a hobbie if I didn't, and perhaps get a whipping if I didn't join them; they told me that I had to obey orders, or I'd get into trouble; they told me that it would not be safe for me out of the order; they said I would be whipped or used roughly in some way or other.

Judge Bond. I think there ought to be another proclamation of emancipation.

Price continued. Robert Scruggs ordered me to go on the raid; Bank Lyles, they told me, was chief of the Klan; I can't say that I thought of saving myself by going and whipping negroes and children, but I thought I was bound to join the Klan and obey orders, and the reason why I didn't tell some of the authorities then, was that I was afraid to do it.

Q. Why didn't you tell the preachers there about these things? A. I did not know but they might belong to the order.

#### CONFESSION OF TAYLOR VASSEY.

Taylor Vassey having pleaded guilty, said:

I belong to the Horse Creek Klan; I joined about the last of March; I attended some three or four of the meetings, but there was nothing particular done while I was there; some of them went off and talked by themselves, but I didn't know what it was about. I have only been on two raids; there was nothing done to Hindo, but they whipped James Gaffney; and there was another fellow whipped that night—Matt Scruggs, a colored boy; we gave James Gaffney about three licks apiece; he was whipped for stealing; they talked to him right smart, but I don't know that they said anything to him about politics; I joined the Ku Klux because I was afraid they would whip me if I didn't; I am not able to read or write, and am about twenty years old.

#### CONFESSION OF KING EDWARDS.

King Edwards having pleaded guilty, confessed as follows:

I was twenty-one years old last April; I joined the Horse Creek Klan last March; I joined it through ignorance, I reckon; I can't read or write much; Alfred Harris initiated me; I was on six or seven raids, I guess; we first went on Dick Roberts; Alfred Harris, Jervey Gidney, Thomas Tait, Christenberry Tait, and Jonas Vassey were on the raid; Dick Roberts was a white man; he had been stealing things from another man, and we talked to him; the next raid was on John Harris; he was a black man, and we whipped him; it was 9 or 10 o'clock at night, I reckon; we pulled him out of bed and whipped him a little

with hickories; some of them said they gave him about sixty licks altogether; we whipped another black boy whose name was Mage Cash, and we whipped another named Humphries; he was whipped for whipping his young master; we didn't talk to him about politics; we next went on Martha Jolly, but we didn't do anything with her; we next hunted for Jack Bark, but we didn't find him; Alfred Harris led the first raid, and Jonas Vassey led the other; we made a raid on John Harris, and Billy Scruggs led us that night.

#### CONFESSION OF CHRISTENBERRY TAIT.

Christenberry Tait, having pleaded guilty, confessed as follows:

I belong to the Horse Creek Klan; I am going on for eighteen years old, I guess; I cannot read or write; I joined the Klan last January; I joined it because they shouldn't raid on me; they told me I had better join for fear of being killed; I have been on three or four raids; the first was on Richard Roberts; we raided on him because there had been talk about his selling whisky on Sabbath day; he lived near the church, and had a bar room, and we ordered him to stop selling whisky on meeting day; then we went to old Hilde's; he was a boy that wouldn't mind his mother, and we told him he had better mind her, and some of them struck him about ten licks with a peach tree switch; we went into another black man's house, but we didn't do anything to him; I do not know but that I have heard that Banks Lyle was Chief of the Klan; there were some respectable people in our neighborhood; there is Mr. Watkins and Mr. Collins, William McKinney and Miller McKinney; they are respectable men, and well off; I joined the organization because they told me I would not be safe if I did not; William McKinney was taken out just before this thing was broken up, and he would have been whipped if he had not joined.

#### CONFESSION OF JESSIE TAIT.

Jessie Tait having pleaded guilty, confessed as follows:

[This was the only one of the prisoners who appeared to be over twenty-five years of age.]

I joined the Horse Creek Klan last January; I live in Spartanburg near the North Carolina line; I never was on a raid in my life; I joined the Ku Klux because I thought it would not be safe for me not to; it was Thomas Tait that told me it would not be safe for me if I did not join the order; I am an unlearned man, but I never thought about it being violation of law or anything of the kind to join it; Fred Edwards, Mr. Carter, David Collins, and William Scruggs, were the principal men in our neighborhood; there were very few men there who kept out of the order; they all said they would go into it for self-defense, for they got up a report that the majority in the United States belonged to it, and they said that every man that did not go into it would be forced into it; I can't read or write to make much of it; I can just manage to write my name; we have lawyers and preachers up there, but I don't know that they've talked about this thing; people generally go to church up there; there wasn't much whipping in our neighborhood, for there are very few negroes there; I heard of a raid once at Rutherford where they took the editor out, and I heard that Mr. Scruggs was in that; the order came from the Chief. Since I have been down here I have heard him called the Great Cyclock. I have learned more about it down here than ever I knew before in all my life. When they were going on that raid only those that had horses were ordered to go. We are very poor up in the neighborhood, and only few of them had horses. I never straddled a horse in my life on any such business, and never had a disguise on or anything of the kind. King Edwards, Alfred Harris, Taylor Vassey were members of the Horse Creek Klan. I live by farming, rented land, and I got news here the other day that the gentleman who owns the land was going to dispossess me and turn my wife out of doors, although she is hardly able to sit up, because I surrendered myself and got myself taken up without being put under arrest.

Judge Bond. Take this man's recognizances in five hundred dollars, that he may answer at a future sitting of the court.

#### CONFESSION OF FREDERICK HARRIS.

Frederick Harris, having pleaded guilty, confessed as follows:

I live in Spartanburg county, and belong to the Horse Creek Klan; Jonas Vassey is chief; I

joined on the 28th of last March; Dyke Harris initiated me; I joined it for protection and to keep from being whipped. The Ku Klux were whipping all round, and it was a great deal talked about among the people, and the only reason I had for joining them was through fear. I have been on two raids, and five were whipped in all; I can't say that I helped whip five people to keep myself from being whipped; I know I was ordered to do it; we whipped a colored man named Humphreys; we pulled him out of bed and talked to him, but not about politics; we gave him about twenty licks; there were, I believe, ten of us. The next was a colored man named John Harris. We found him in bed, pulled him out, and whipped him. The next was Maje Harris; the next Matt Scruggs, and the next James Gaffney; they were colored men; I cannot read or write, and I am going on twenty years old.

Q. Did you not know this was all wrong? A. No, sir; I didn't know nothing about it.

Q. Would you not have thought it wrong if James Gaffney had dragged you out of bed and whipped you? A. Well, I suppose I would have thought hard of it.

Q. Don't you suppose he thought the same? A. I didn't know whether it was wrong or not; I was ordered to do it by the committee; Jed Edwards was one, and Steb Scruggs was another; Scruggs owns a farm; David Collins is a respectable man up there; he didn't advise us against it; there was Billy McKinney. I don't know whether he was a Ku Klux or not; I suppose the reason why I did not say I would not join the Ku Klux, was because I hadn't sense enough.

#### CONFESSION OF M. T. PHILLIPS

[The articulation of this witness was so imperfect that it was necessary to use William Robbins, a brother Ku Klux, as interpreter.]

I never could talk so that anybody would understand me; I am going on twenty-five years old; I joined the Du Bond Klan; I should not have joined it if I had not been forced into it; they whipped me before I joined the Klan. [Interpreter: That is so.] My brother-in-law said I must join it; it would not be safe for me if I didn't; I was initiated by Franklin Ray; I cannot read or write; almost everybody belonged to it.

#### CONFESSION OF WILLIAM ROBBINS.

The reason why I joined the Ku Klux order was that there was more of my side—the Democrats—than of Republicans. I didn't belong to the Ku Klux order, but they sent me word that they believed I was after something, and so I was. I had said that I thought the thing ought to be put down, but all seemed afraid to take hold of it. The best men and the highest men belonged to the order, and they advised me to join for my protection.

I can't say that they would have forced me into it if I had resisted; but it would have been a pretty bad thing, for, when they come about you, they don't give you much time to do anything. I know, when they first came into my field to get me to join, I threatened to fire into them. Next day, they sent a man to talk to me, and he told me there were two chances for me; one was to join the order; the other was to be abused by them.

I don't think there were many in that part of the country that did not belong to it.

I live about two miles from the North Carolina line. I never was on but one raid in my life.

Q. What likelihood is there that the witnesses who have testified in these Ku Klux cases will be threatened and persecuted when they return to Spartanburg? A. I would say that I would hate to be one and risk it; because I heard leading men there say it would be their day next; I heard them say that when witnesses were called from our neighborhood to go to North Carolina.

Q. Who did you hear say that? A. Gilbert Suatt and Preston Goforth; they are two leading and respectable men; I heard them say it when there was a public meeting there and they were in the crowd, and it was in the latter part of the summer, about the time they took some of them up to Raleigh to try them; this was at a public meeting, at Grassy Pond, and the speaker advised them to stop this Ku Kluxing; he was opposed to it, he said; I cannot say if Gilbert Suratt is to be found at home; I have been here eleven weeks, and have only had one letter from home in that time.

Judge Bond announced that he would hold these cases under advisement.

#### CASE OF COL. F. W. MCMASTER.

Mr. Corbin read the order of the court, that F. W. McMaster, attorney, show cause why his name should not be struck from the roll of attorneys for refusing to state to the court where his client, E. T. Avery, was, and for whom bail had been taken, at the request of Mr. McMaster. Mr. McMaster was represented by Mr. Fickling and Mr. Waties.

Mr. Fickling read the answer of Mr. McMaster, which in substance said:

In answer to the rule the respondent replied that on the occasion referred to, the question propounded by the court was, "Where is your client?" to which the respondent replied that he hoped the court would excuse him from answering the question. The respondent denies any intention of showing an disrespect to the court, or of putting himself in contempt; but he claims certain rights and privileges as a member of the bar which are as sacred as those of life and liberty, and which he felt bound to assert. He submits that there was no requirement on his part as an attorney to answer the question propounded, and that his mere refusal was no contempt. He submits that it was not his duty to become an informer against his client, and therefore his refusal to answer was not in contempt of the court.

He submits, further, that he was in no wise the custodian of his client who was under recognition of bail, and that he was not admitted to bail at his request, but only upon his application as an attorney, and that bail was allowed as a matter of right upon the terms prescribed by the court.

#### ARGUMENT OF MR. FICKLING.

Mr. Fickling said: That in submitting the return of Mr. McMaster to the rule of the court, we were conscious of representing a gentleman of tried honor, integrity and virtue; one who by a life of purity had secured the confidence, esteem and respect of all who knew him. Mr. McMaster was one to whom anything mean or low, corrupt or fraudulent, or infamous, was abhorrent. He was one who was incapable of doing anything which as a gentleman, or man of honor, or as a member of that bar, it would be improper for him, knowingly, to do under such circumstances. He was startled at the magnitude of the charge preferred against his client. It was not simply a rule to show cause why Mr. McMaster should not be attached for contempt, but why his name should not be stricken from the roll of the bar; why he should not be disgraced, degraded, and rendered infamous for all time, as far as it was in the power of that court to render him.

He would first present the question, was Mr. McMaster's conduct any contempt at all?

He would ask their honors whether the court regarded it as their prerogative to ask a member of the bar any question which the court might please to put and to require thereto a categorical reply.

Contempt was a recognized offense, but it had its limitations. The intention to be discourteous, rude and defiant to the court was contempt. Mr. McMaster had no such intention. His reply was in the most courteous terms. It was not even a refusal to answer the court, but a desire to be excused from answering. But has it been a positive refusal, not discourteous or in any way insulting, would it then have been a contempt?

Contempt was the doing by an attorney of that which he had no right to do in the face of the court. There must be wrong involved. It was quite possible that a question might be asked by the court which the attorney has not learned to answer.

Comyn's Digest, B. 14 15, defines contempt, and gives a catalogue of different things which an attorney ought not to do, and for the doing of which an attorney might be punished; but the refusal to answer a question was not among those offenses that came within the rule. He distinctly asserts that there must be some wrong intended or done; something violative of his duty and obligations as an attorney; something corrupt, fraudulent, or some intentional rudeness or insult to the court. None of which existed in the conduct of Mr. McMaster.

Mr. Fickling here read from Bacon's abridgment, vol. 1, under letter I, the grounds upon which an attorney could be charged with contempt: namely, acts showing a base, corrupt, or fraudulent intent.

Again, would not affidavits be required to show that Mr. McMaster was in possession of the knowledge which the court desired him to divulge? Before an attorney could be stricken from the rolls there must be proof of an offense deserving that judgment. No man was bound to accuse himself, and no man could be refused before conviction. There was no crime in refusing to answer a question; it was no violation of moral obligation; there was no collusion or attempt to deceive, or defraud the court.

Again, the court would not proceed to punish for contempt when the party injured, the United States, had other redress. The United States had a full and adequate remedy—the forfeiture of the recognizance. Dr. Avery was not a prisoner at the time he left. He had been a prisoner, but had been released, discharged, was at liberty to go where he pleased, subject to the bond he gave. If he was not here he had to pay his bond. That was the only restraint under which he was held.

Mr. McMaster was not bound to be an informer; he was in no wise the custodian of the person of Dr. Avery, and in no way responsible for his safe-keeping. He was not morally or professionally bound to declare where he was, even if he knew; indeed it would have been a violation of his professional confidence if, knowing, he had confessed.

Mr. Fickling then quoted from Bacon's Abridgement, vol. 3, under letter A, and concluded by saying, that had Mr. McMaster attempted to betray the confidence of his client, he would have deserved the reprimand of the court.

At the close of Mr. Fickling's argument, Mr. Corbin said, that he and Mr. Chamberlain had not had an opportunity to examine the question, but that they felt very confident that the authorities would bear them out in saying that the refusal to answer implicated Mr. McMaster in the attempt to escape, and in that regard it was unquestionably an interference with the due course of justice. He thought, if time could be granted until Thursday, they could furnish a most complete reply to the return.

The court adjourned until 11 A. M. Thursday morning.

## TWENTY-EIGHTH DAY'S PROCEEDINGS, JANUARY 4.

The Court met pursuant to adjournment. Hon. H. L. Bond, presiding; Hon. Geo. S. Bryan Associate Judge.  
CASE OF MR. McMASTER.

According to announcement, the counsel for the Government proceeded to the argument in the case of Mr. McMaster, as to whether he should be held for contempt in refusing to answer the interrogatories of the court, as to his knowledge of the whereabouts of his client, Edward T. Avery, who escaped while on trial for conspiracy.

### ARGUMENT OF MR. CHAMBERLAIN.

May it please the Court: In the matter of the plea against Mr. McMaster, I do not consider myself as appearing here in the capacity of an advocate, but rather in the discharge of a duty that is laid upon me by the court, as well as in the discharge of my duty as a representative of the Government; for this is a proceeding which affects the discharge and completion of a duty, namely, the prosecution of this case,—which we have undertaken for the United States Government.

I think every one who knows me will be assured that I could not press this matter with anything of acrimony or personal ill-feeling toward the gentleman whom this matter more particularly touches, and for whom I have none but the kindest personal feelings.

The facts out of which this proceeding has arisen, are not disputed. Upon observing the absence of the defendant, Dr. Avery, the court inquired of his attorney if he knew the whereabouts of his client, and his answer was a request to be excused from answering. He was then asked if he had had any communication with his client in reference to his absence.

Mr. Fickling. I think his Honor determined yesterday that he did not propound that question.

Mr. Chamberlain. I did not know that there was any dispute about the correctness of the phonographer's report.

Judge Bond. None whatever. Mr. McMaster was asked if he knew the whereabouts of his client, and then he was asked if he had any communication with him before going away.

Mr. Chamberlain. The questions are precisely as taken down by the reporter.

"The Court. Do you know where your client, is Mr. McMaster?"

"Mr. McMaster. I beg the court will excuse me from answering that question."

"The Court. Had you any knowledge from your client that he was going away?"

Which question Mr. McMaster also declined to answer.

It is now claimed that the mere declining to answer these questions cannot be construed into proof that Mr. McMaster was aware of the reason or purpose of his client in absenting himself. In other words, and as distinctly stated by his counsel yesterday, the court should be required to prove an *alibi*, to proceed on *alibi*, or, by some other method of proof, to ascertain if Mr. McMaster had any complicity in the escape of his client from trial.

It seems to us that in this matter Mr. McMaster has exposed himself to the just and necessary inference in declining to answer this question that he had knowledge of the whereabouts of his client, and that he had communication with him upon that subject before he left; for he says to the Court, in effect: I cannot answer those questions because it will criminate myself. His declining to answer those questions, and explain, leaves us to the inevitable inference, as the case now stands, that he did know, and that he did have communication with Dr. Avery with reference to his escape. If this be true, it seems to me that there is but one ground upon which Mr. McMaster can protect himself from the consequences of complicity in the escape of this prisoner. It seems to me that he cannot claim that this communication with his client with reference to this escape, was in the nature of a privileged communication made by his client to him while in the exercise of his professional duty to that client. Therefore we meet the very grave question, the all-important question in this communication, whether such a communication as that is a privileged communication, from a client to his professional adviser.

Let us remember that an attorney is an officer of the court. However widely the popular mind may have strayed from the just conception of the duty of an attorney, he is always considered in law, strictly as an officer of the court, an officer of justice; concerned always when he is in the discharge of his professional duties, with furthering the ends of justice. That may recall some of us, who are attorneys, from a very wide straying from this correct and just conception of our duties, but it is nevertheless true that we are all of us as attorneys, as much officers of justice as your honors are, or as the marshals, or other executive officers, of your court are, and, equally and always concerned in the protection of law, and in the vindication and execution of justice. Any departure from that line of duty on the part of an attorney is a palpable dereliction of duty.

There are in the discharge of the duties of an attorney, certain communication from client to attorney, which he may not disclose, and which the court will not allow him to disclose; and the question to my mind now seems to be: was the knowledge derived from communications with Dr. Avery to Mr. McMaster the subject of a privileged communication, which this court may not require him to disclose?

Now, may it please your honors, if Mr. McMaster was set to defend Dr. Avery against the charge of conspiracy, before this court, he was the professional adviser with reference to this case, and with reference to the indictment against his client; that he had conspired with others to violate the laws of the United States. Now, is there anything in that which looks to any complicity with this escape from that trial? Is he defending Dr. Avery, in any just sense of the term, when he conspires, conspires or communicates with him in reference to his escape from the jurisdiction and authority of this court? When I undertake to defend a client in this court, against a charge brought against him, is it competent for me, as his attorney, as an officer set here to further the ends of justice, to communicate with him in reference to his trial, but to his escape from trial; not that justice may be done upon

him in the matter of receiving a verdict of guilty, or not guilty, but that he may put himself beyond the reach of the court and prevent justice, either in his behalf or against him, from being attained?

It is true that privilege of client to attorney is very broad, but it does not cover everything, and it does not conflict with that great duty which the attorney, from the nature of his office, under his oath, holds to a court of justice.

A good statement in this general rule is found in first Greenleaf, on Evidence, section 240. [Mr. Chamberlain here read the paragraph on protection of communication from client to attorney.]

It will be seen that this entirely covers any communication which may have been made to Mr. McMaster for his professional aid or advice upon the subject of Dr. Avery's rights and liabilities. But what was the case upon which Mr. McMaster had undertaken to give professional aid and advice? Was it a question whether it was prudent for Dr. Avery to stand his trial? No, it was upon his rights and liabilities to the law—not how he might escape from the reach of the law, and put himself beyond the power of this court. Professional aid and advice upon the subject of his rights and liabilities, how he shall be defended, what was necessary to constitute a legal defense against this charge, what evidence is admissible and what shall be excluded, and what consideration shall be addressed to the court in his behalf. Yet I understand the claim now to be made that all this embraces advice and communication with reference to his escape from the very forum where his attorney had been standing to defend him. But is that professional aid and advice? Is that advice upon the subject of the rights and liabilities of Dr. Avery in this court and under this indictment? It clearly is not, but it is communication and advice with respect to his escape from the very position where Mr. McMaster was stationed and had undertaken to conduct his defense. It was an arrow's flight beyond professional range. It was a confession that the hour for professional advice was gone, and that, having discharged the utmost of his duty and exhausted the utmost of his ingenuity, the law was pressing upon his client to his conviction. Then Mr. McMaster assumed to step beyond that line and communicate and advise with his client with reference to his escape.

The limitation upon the sacredness of communication from client to attorney is distinctly stated by the same authority—Greenleaf on Evidence, section 244.

Mr. Chamberlain here read the passage relating to privileged communication.

There is no doubt when this communication was had with Dr. Avery that the relation of attorney and client existed between those two gentlemen, but the question is had Dr. Avery's escape anything to do with the professional advice and assistance which Mr. McMaster was bound to give to his client. If, as I have shown you, he could not, in the exercise of the just functions of his office of attorney, have communication and be privileged in concealing it, then we have here precisely the explanation which is recognized by this authority of communications made while the relation of attorney and client subsists, but still having no relation to the execution and performance of professional duty.

This, therefore, could not have been a privileged communication. It could not have been advice or assistance given by Mr. McMaster to his client, because it was upon the face of it a palpable and direct attempt not to act as an officer of this court; but to act in defiance of this court, and for the express purpose of enabling his client not to stand his defense and meet his verdict, but to escape beyond the reach of justice.

My friend, yesterday, in his argument in behalf of Mr. McMaster, alluded to the fact that Dr. Avery had been admitted to bail by this court, and he distinctly advanced the doctrine that the forfeiture of that bond was a complete remedy on the part of the United States; a complete equivalent for the presence of Dr. Avery, and that the United States had chosen to set down the value of Dr. Avery at \$3000, and that the United States would have its remedy in the forfeiture of the \$3000 for the non-punishment of Dr. Avery for this offense. I think I never heard a more dangerous or a more unsupported doctrine advanced in any court. The idea that the United States having fixed the bail of Dr. Avery at \$3000, now receives its equivalent. For my friend distinctly said that here was

the alternative, either stand your trial or pay \$3000, and Dr. Avery had taken the alternative of paying \$3,000, and therefore the United States and Dr. Avery were even. Did the United States, or did your honors, when you granted that bail and fixed the amount at three thousand dollars, conceive that that was the equivalent for the offense committed? I need not argue that point. The purpose of that bail was simply to enable Dr. Avery, instead of remaining within the prison walls to await his trial to be at large, and to visit his family and to enjoy his freedom, under that restraint until the hour when the Government would call him to his trial. It was simply to secure his presence at his trial, and had no reference whatever, and brought about no such relation between the Government and Dr. Avery; that if he chose to pay \$3,000, the Government had no further claims against him, and if this claim was supported, then what right has the Marshal with his officers and detectives to be to-day upon the track of Dr. Avery? We have got his three thousand dollars, but if my friend's argument is correct, Dr. Avery owes us nothing more; he has taken his alternative, forfeited his three thousand dollars and gone. And then his attorney had the right to advise him to it. No, if it please your Honors, he was bound to be here upon the penalty of the forfeiture of three thousand dollars to meet his trial. That was the significance of his bond; and it had nothing whatever to do and does not form the slightest justification for any advice or aid from his attorney in forfeiting that bond to take himself beyond the reach of the court.

The general power of a court to punish the offense and misbehavior of attorneys is stated in Bacon's Abridgement, vol. 1, page 506, under the title of Attorney, capital letter H. Mr. Chamberlain read the passage from Bacon, which was to the effect that attorneys could be struck from the roll for ill practice, attended with fraud and corruption, committed against the obvious rules of justice and common honesty.

It has not, I think, been claimed in this matter that it was by accident or neglect that Mr. McMaster's communication with his client arose; although it has been claimed that the Government has another remedy against Dr. Avery, to wit—the forfeiture of his bond. Mr. Chamberlain here quoted from Cranch's Circuit Court Report, vol. 4, page 503, showing that an attorney was not permitted to evade the fair operation of the law or impede the course of justice.

The just rights of Dr. Avery were in the keeping and protection of Mr. McMaster, but nothing more. His rights here were to a fair trial, to a full examination of all his evidence, and the opportunity to present every circumstance and every particle of evidence that might be presented in his behalf; but it extended no further. He was bound to protect the just rights of his client, but he was not bound—he was forbidden by honorable, professional conduct—to attempt to evade the operations of the law, or to defeat the administration of justice.

Has the operation of the law been evaded? Has the administration of justice been defeated? If Mr. McMaster, in his communication with his client, had knowledge of this purpose on the part of his client, then he was not in the discharge of his professional duty. It was in violation of professional duty, and in contempt and scorn of this court, when he listened to that communication, and gave that advice, and came in to this court to decline to answer those questions.

Mr. Chamberlain here read from the following authorities: Cranch's Circuit Court Reports, volume 2, page 379; also Wallace's reports, volume 7, page 36; showing that attorneys could be proceeded against for disobedience of rules and for ill-practice against the obvious rules of justice and common honesty.

These authorities go distinctly to the point; that it is entirely beyond the discharge of professional duty to attempt, directly or indirectly, to defeat the administration of justice, or to evade the operation of the law, and that there is no duty which the court will more jealously and invariably discharge than that of affixing proper punishment for such an offense, on the part of its officers.

Can there be a doubt that, in this instance, the administration of justice has been defeated, and operations of the law evaded?

ARGUMENT OF MR. CORBIN.

May it please your Honors: I feel that I need to add but a word to what has been so well said



by the Attorney General. It is a delicate and a somewhat trying duty to animadvert upon the conduct of a brother attorney. It is an unpleasant duty, because, if the court please, we are all officers of the court, and we are all called brothers at the bar. Our relations are usually and necessarily friendly. Our business communications are constant, and all know how much more agreeable it is to be upon friendly terms with those with whom we have constant business relations. But we sustain another relation, namely, that of fidelity to the court. We have a duty to perform to the court, as well as to each other, and it is a duty which we cannot disregard. The court relies upon us, and it relies upon our honesty, our honor and our fidelity. And we owe another duty to the community in which we live, and that is to sustain the high character of the profession to which we belong. When one of our number steps aside from the high duty which he, as counsellor, owes to the court, then it becomes a duty, though a painful one, to speak to him as we ought, in vindication of ourselves, the profession, and the court.

What is the necessary and inevitable inference from the reply of Mr. McMaster, to the question of the court? "Do you know where your client is, Mr. McMaster?" "Had you any knowledge that your client was going away?" His reply is: "I decline to answer." The necessary inference from that—and it is one from which neither we nor the court can escape—and it is the inference which the community will draw, and the world readily understand, and that is, he did know where his client was. Had knowledge from his client that he was going away? The inference is, that he declined answering these questions in order to conceal the flight of his client, and thus aid in his escape. His client was on trial for a felony, much time of the court had been consumed in the trial, witnesses for and against him had been examined, and when it became apparent that he might probably be convicted, then he, with the knowledge, consent and assistance of his attorney—because concealment is assistance—he seeks safety in flight, and by the aid and assistance of his attorney, defeats the due course of justice. This is the true statement of the case, and we must not seek to cover Mr. McMaster with a mantle of charity; for the common sense of mankind will draw the inferences I have presented, and will adhere to them to the end of time.

Now, I ask, is the conduct of Mr. McMaster consistent with his duty as an attorney and counsellor of this court? The relation of attorney and counsellor to the court is one of confidence. The court relies on his integrity and honor; he is a friend to the court. If any fraud is being practised on the court he must disclose it; any attempt to cheat or mislead the court, or defeat the due process of the court, the attorney or counsellor should inform the court of it; because his relation to the court is one of confidence and trust; his oath implies it; he is sworn to faithfully discharge his duties as an officer of the court. Lord Mansfield says, that he sustains these relations to the court, and that his conduct should be above suspicion. But I ask how does this conduct of this gentleman appear when measured by this rule? The gentlemen on the other side argue, that being counsellor for Dr. Avery, he had a right to conceal everything including his flight, or anything his client might choose to do. But the rule that Mr. Russell lays down in his work on Crime, Vol. 2, page 908, is that the privilege of an attorney does not attach to every thing that the client may say to his attorney. The test is, whether it is necessary for carrying on the proceeding in which the attorney is employed. If it was necessary for his defense, then Mr. McMaster would be excused, but if not necessary for the purpose of carrying on the proceeding in which the attorney was employed, then his communication was not privileged.

Was it necessary, I ask, to the defense of his client, that he should refuse to tell where his client was, or refuse to disclose the fact of his flight? His flight was the defeat of the progress of the cause. His flight defeated the administration of justice and robbed the law of its just penalty. Now, if Mr. McMaster was implicated in that, it seems to me that that is the end of the cause. The authority on this point cannot be rebutted, and it was repeated in what my assistant, the Attorney General stated, that unless the communication was necessary to his cause, and connected with his cause and the due conducting of the defense, it was not a privileged communica-

tion, and it cannot be said that there was any excuse in this case for refusing to reply.

The very moment the demand was made by the court, we witnessed the proper conduct of an attorney. What did Mr. Wilson say when interrogated by the court? Feeling that he might be implicated in the flight of the defendant, on being asked "Where is your client?" Mr. Wilson replied, "I understood when we adjourned, that Dr. Avery had gone to see his family, and that he would return to-day." "Do you expect him back?" asks the court. "I have had no interview with him, but I expect him to return by the next train; I know nothing, save from information I received from Mr. McMaster." Here, if the court please, is proper conduct on the part of an attorney. Under the circumstances, he feels that the flight of the defendant may be attributed to him, and he hastens to assure the court that he knew nothing about it, but expected him here. He is ready and willing to disclose the honest relation of himself with his client, so far as the court deemed such information necessary to the protection of the cause. Mr. Wilson, in his frank avowal to the court and the counsel on our side, says in effect, "I hope you will not suspect that I am implicated in the flight of this defendant."

Such conduct is precisely what we have a right to expect from an honorable attorney. Now contrast it with that of the other gentleman. "I hope the court will excuse me from answering." "Do you know anything about your client?" Again we hear, "I hope the court will excuse me from answering." Why does the court want to know? The court cannot go on without the defendant. We are proposing to go to the jury, and to ask the jury to pass upon this defendant. Without the defendant the result of the trial will be a nullity, and why shall the court lose time? Why should the attorney withhold all information with reference to his client? Where he is, and whether or not he proposes to return, but for the obvious reason that if his flight is not concealed and we are informed, then his flight will fail and the man will be brought back and placed in the custody of the court, and justice be meted out to him.

Now, I say, that if such conduct does not meet with reprehension from this court it will certainly meet with condemnation from the public at large. I feel, as a member of the bar, and interested in the reputation of attorneys, that such conduct cannot pass without the reprehension of the court. I feel that it is the duty of the court to maintain the honor and integrity of the bar; and if misconduct is seen in the case of any attorney, then the court will purge the bar and not compel us to all stand together. The court knows how popular it is outside of our profession, to attribute all sorts of low practices and designs, to members of the bar. We know full well it is unjust in many instances, but I hope this court will not aid that public sentiment, but will say, now that this case has been brought to its attention, that the misconduct of attorneys of this court, their interference with, or their connivance at the defeat of justice shall be punished, and that such practitioners shall be thrown over the bar of this court. In that way the court will protect itself, will protect the integrity of the bar, and not permit attorneys hereafter to interfere with, or connive at, or assist criminals in escaping from the meshes of the law.

#### ARGUMENT OF MR. WATIES.

Mr. Waties, in concluding the argument in behalf of Mr. McMaster said, that the present question was not only of great gravity to the respondent, but reached far beyond the individual and the present hour; it concerned every individual of the commonwealth. It concerned every member of the bar as well as it did the respondent.

He would first endeavor to show the sufficiency of the return to the rule. The rule requires that the respondent should show cause why his name should not be stricken from the roll of attorneys of this court for contempt in refusing to state the whereabouts of his client, E. T. Avery, for whom bail had been taken at request of Mr. McMaster.

Now Mr. McMaster utterly disclaimed any intention to show disrespect or contempt to the court by his refusal to answer. But the respondent justified his refusal to answer upon the broad ground that the court had no right to demand an answer, or in other words, that the



court had no right to put the question. If the court had no authority to ask the question, there could certainly be no contempt on the part of the respondent in refusing to answer.

But supposing, for the sake of argument, that the question of the court was legal and legitimate, but that the respondent honestly believed that it was not and that therefore he was justified in refusing to answer, would their Honors hold him in contempt for a mere error of judgment? Before their honors would strike an attorney from the rolls they would first have to decide that he was mistaken as to his rights and privileges, and if they so decided and he was bound to answer that or any question propounded, then they would certainly excuse him from contempt if he honestly made the mistake. But it was contended that he was not mistaken as to his right.

To find the respondent guilty of contempt their Honors would first have to find that the court was authorized to demand of him, as an attorney, an answer to the question as to disclosing the whereabouts of his client, and, secondly, that his honest error of judgment in refusing to answer, was no excuse for refusing to answer; thirdly, that his first and highest duty, as an attorney, was not to his client, and fourthly, that he was not honest and conscientious in the discharge of his duty to that client.

Viewing this as a privileged communication between the attorney and client, on what principle could the court demand that the respondent should answer the question? Was it not contrary to the practice of courts? Was it not rather the province of the court to prevent an attorney from disclosing the secrets of his client? How much worse would it be were the court to attempt to force him to disclose? Greenleaf, volume 1, paragraph 331, said that what an attorney learned as counsel or attorney he was not obliged or permitted to disclose. Mr. McMaster was asked the whereabouts of Dr. Avery. If Dr. Avery told him, it was a secret confided to him by his client and he was not permitted to reveal it. Greenleaf says this was the rule of law for the protection of the client, and the best way in which Mr. McMaster protected his client was to keep his mouth shut.

Greenleaf further said, page 332, that no court would permit an attorney to disclose his client's secrets, and if he attempted to disclose them he would be struck from the roll. The rule which Lord Eldon applied to prevent an attorney from disclosing the confidential communication of his client, their honors would not surely apply to force him to disclose them?

If the seal of the law was placed on Mr. McMaster's lips, it was there still, and it must remain there forever unless removed by the client himself, and the court would keep it there, for, as Lord Eldon said, they would not permit him to remove it.

He contended that it was better that the interests of criminal justice should suffer than that this rule and law of professional confidence between counsel and client should be weakened or impaired in the slightest degree. It was better that a criminal should escape than that the seal of confidence should be broken?

He would go further and say that the greater the secret the greater the confidence; the more important the communication made to the counsel by the client the more is he, in honor, bound to keep it, both in honor and in law. How else could there be any confidence between attorney and client?

Such a disclosure as Mr. McMaster was asked to make would not only be a violation of privilege, but would be contrary to law and would work a manifest injury to society.

I have the privilege of construing that rule, and I do construe it in favor of my client—of my friend. If he was my client I might be called upon to reveal something.

The District Attorney and his colleague go outside of the rule in their effort to correct this respondent. They contend that Colonel McMaster's refusal to answer shows complicity in aiding Avery to escape—this refusal to divulge a privileged communication shows complicity in Avery's escape. May it please your honors: In the first place, it is denied that there was any escape. Dr. Avery was out on bail, and free to go where he pleased.

Mr. McMaster stands before you to-day, may it please your honors, as pure, upright and conscientious an advocate as there is at this bar. He has acted throughout this whole matter as became an honorable man and a worthy attorney of this court. He has nothing to blush for, nothing to regret, nothing to retract. He can say,

with Luther, when called on to recant before the Diet of Worms, "I canot; I may not recant, because it is neither safe nor well advised to act in any way against conscience. Here I stand. God help me. I cannot do otherwise."

Mr. Corbin presented an additional authority in 2 Russell on Crimes, 909, and at three o'clock court adjourned.

## TWENTY-NINTH DAY'S PROCEEDINGS, JANUARY 5.

The court met pursuant to adjournment, the Hon. H. L. Bond presiding; Hon. Geo. S. Bryan, Associate Judge.

### PRISONERS PLEADING GUILTY.

Mr. Corbin said: There are some seventeen prisoners here, anxious to plead guilty, and to throw themselves upon the mercy of the court, and I respectfully ask that judgment may be passed upon them. They have come in voluntarily to plead guilty. There are in many of the cases extenuating circumstances that ought, in my judgment, to appeal to the clemency of the court. Some of the prisoners are young, many of them are very ignorant, and nearly all claim that they have been driven into this organization by the force of public opinion, by threats, and to save themselves from the visitations of the Ku Klux; in other words, they went into this organization to protect themselves from its violence.

In almost all the cases to which I ask the attention of the court, the parties have gone upon raids, and have assisted in inflicting punishment, more or less severe, upon the negroes of Spartanburg county.

If it were possible to excuse some of them, entirely from the just punishment for these offenses, I, for one, would be glad to do it, for I think the responsibility of these outrages rests upon the men of the county who were the leaders and chiefs of Klans; in many cases men of property, who have led and controlled these others. These are the ones that ought to be punished. But your Honors know that most of this class who, from their social influence and position, aided in the perpetration of these crimes, have fled the country. They were able to fly, but many of these parties were not able to flee, and when it was known amongst them that these charges were made against them and that proof existed, and was in the hands of the government, they pleaded guilty and desired to throw themselves upon the mercy of the court.

I do not see how it is consistent with the protection of the citizens of that county to allow these parties to escape without some punishment. I do not see how the government can permit the plea that the force of public opinion in that neighborhood forced them into an organization like this, and that the fear of visitations from the Ku Klux should lead them to enter an organization and join in atrocities such as they confess to and yet be held guiltless. The individual responsibility of the citizen before the law seems to be inconsistent with such a plea.

In making these remarks, it is simply to express the desire that a wise and merciful discrimination should be made in favor of those who have been led, seduced or forced into an organization guilty of such inhuman atrocities.

The prisoners being in court were ordered to stand up, and, after their names were called and the indictment read, charging them with conspiracy and interference with the right of voting by raiding and whipping colored citizens, they severally pleaded guilty.

Judge Bond then addressed them as follows:

### REMARKS OF JUDGE BOND.

You have pleaded guilty to an indictment which charges you with conspiring with other men throughout this State, to intimidate a certain class of voters by means of threats, beating and even killing, because that class of citizens were opposed to the conspiracy in political opinion.

We acknowledge great perplexity in determining what punishment shall be meted out to you. We have no words strong enough to signify our horror at the

means employed to carry out the purpose of the Klans. Our difficulty is personal to you.

You have as it appears from your statements to the court been brought up in the most deplorable ignorance. As the age of manhood, but one or two of you can either read or write, and you have lived in a community where the evidence seems to establish the fact that the men of prominence and education—those who by their superiority in these respects establish and control public opinion—were for the most part participants in the conspiracy, or so much in terror of it that you could obtain from them neither protection nor advice, has you sought it.

There is abundant proof of the nature and character of the conspiracy. Evidence of nightly raids by bands of disguised men, who broke into the houses of negroes and dragged them from their beds—parents and children—and, tying them to trees, unmercifully beat them, is exhibited in every case. Murder and rape are not infrequent accompaniments, the story of which is too indecent for public mention. The persons upon whom these atrocities are committed are almost always colored people. Whatever excuse is given for a raid, its conclusion was almost always accompanied by a rebuke for the former exercise of the suffrage and a warning as to the future exercise of the right to vote.

But what is quite as appalling to the court as the horrible nature of these offenses is the utter absence on your part and on the part of others who have made confession here of any sense or feeling that you have done anything very wrong in your confessed participation in outrages which are unexampled outside of the Indian territory.

Some of your comrades recite the circumstances of a brutal, unprovoked murder, done by themselves, with as little apparent abhorrence as they would relate the incidents of a picnic, and you yourselves speak of the number, of blows with a hickory, which you inflicted at midnight upon the lacerated, bleeding back of a defenseless woman, without so much as a blush or sigh of regret. None of you seem to have the slightest idea of or respect for the sacredness of the human person. Some of you have yourselves been beaten by the Klans without feeling a smart, but the physical pain. There appears to be no wounding of the spirit; no such sense of injury to yourself as a man as would be felt by the humblest of your fellow citizens in any other part of the United States with which I am acquainted.

There the citizen upon whom such outrages were perpetrated, stung to madness by the insult to his manhood, would be swift to follow the wrong-doer to the end of the world to make him atone for it. You make excuse for this in your statement to the court that you are very ignorant; that the Klans would have beaten you and even killed you, had you refused to join them in their crimes. Some of you now particularly before me have actually suffered for your refusal, before you really united in membership with them. The court, in an endeavor to recognize some features of humanity in you, has considered these facts which you plead as excuses. You have grown up in a country where slavery existed for a long time, and where the whipping post was a standing institution.

To see blacks flagellated was no unusual occurrence. The scene often viewed, with its novelty lost its revolting effect. And when it came to be understood that the human person was not so sacred in the colored man as to secure immunity from outrage, it did not take it long to lose its sacred character in yourselves, and in all other men who, like the colored man, was obliged to labor. It must be from this cause that your utter indifference to wrongs which, among freemen would stir a fever in the blood of age, arises.

And then you tell us that you differ from many other portions of the country in this, that it has always been obligatory upon you, and the class to which you belong, to look to persons of wealth and education for command, and that you, in your ignorance, had to follow such persons implicitly.

It will appear strange to your fellow-countrymen who read your story and that of your confederates, however willing they may be to believe you, that so large a portion of the young white men of your county can be in such a state of abject slavery to the men of property above them, as to be willing to commit murder at their command.

In no case has there been any resistance to these midnight raiders except on the part of the colored people.

You say some of you "laid out" in the woods night after night, and have hidden yourself in thickets to escape these marauders. None of you, however, have had the manliness to defend your firesides from the assaults of these lawless men. There has not been, on your part, so far as the evidence shows, an assault and battery committed in defense of family and home and all that freemen hold dear.

Admitting all you have said to the court to be true, while the story of your condition and of your participation in these outrages through fear is painful enough, the facts do not excuse you. They may palliate, in some degree, your offense, but they cannot justify you. The punishment the court awards you is partly inflicted that you may learn that no amount of threats or fear of punishment will justify a man in unprovoked violence to another, unless the danger threatened to the wrong-doer be imminent or actually present at the time of his wrong doing, and even then the danger must be of present great bodily harm, and of death itself, before some of the criminal conduct confessed would be justified.

It does not excuse you for participating in this conspiracy and raiding upon inoffensive colored people, dragging them from their beds, beating some and hanging others, that you had notice if you did not join the Klans would visit you.

You are bound to run the risk or seek means of protection, rather than do violence to your neighbor. The law and your fellow citizens look to you to make this threat of violence difficult of execution, by a manly resistance or an enforcement of the law. You had no right, when you could escape, to make the price of your security the violation of your neighbor's.

You and your confederates must make up your minds either to resist the Ku Klux conspiracy or the laws of the United States. They cannot both exist together; and it only needs a little manliness and courage on the part of you ignorant dupes of designing men to give supremacy to the law. Be assured it will not be taken as an excuse in your case, or in any other, to hear it said, "I slew this man because the chief ordered it, and I was afraid," and "brushed" and raped these others because I dreaded to be whipped if I did not."

#### TESTIMONY OF A. HARRIS.

Mr. Corbin, here called A. Harris, colored, one of the persons raided on by the prisoners.

In reply to questions of Judge Bond he said:

The Ku Klux raided on me, took me out of my house down the creek a bit, and whipped me with sticks and switches; they whipped me right smart, and gave me something over — lashes on my bare back; they first jerked me up out of bed, and then blindfolded me; they said that I had boasted at the election that I would vote for whom I pleased; I voted the Radical ticket; there was quite a crowd of them inside the house and outside; after they had whipped me they told me to run and not look back at them, or they would shoot me; they whipped me so bad that I could not work, so that I was like to lose my crop; they whipped Major Cast and Humphreys, a neighbor of mine, the same night.

#### CONFESSION OF AARON KZELL.

In reply to the question, what had prisoner to say why the court should be lenient to him, and in answer to interrogatories of Judge Bond, he replied:

I joined the Ku Klux Klan because they threatened me, and said they would whip me if I did not go into it; I have been on only two raids; there were three colored boys that we whipped; I was on the raid on Mr. Justice, at Rutherford; I joined the organization in March; I can read and write but a little; I am nearly 40 years old.

Judge Bond. The sentence of the court is that you be fined ten dollars and imprisoned one year.

#### CONFESSION OF MONROE SCRUGGS.

Why did I join the Klan? Well, I suppose, sir, it was for a want of sense; I have never been on but one raid; that was the one where Mr. Harris was whipped; I am going on 21 years old, but I can't neither read nor write; I work out for my living hoeing; I did not know any thing about the Ku Klux until I went on that raid, and I didn't want to go on another.

## REMARKS OF JUDGE BRYAN.

Judge Bryan, in passing sentence upon the prisoner said :

The court in passing sentence upon you, looks upon your youth; you have not the responsibility of settled manhood, and it is but natural that you should have taken direction from those who were older than yourself, and you may have been impressed by the public sentiment around you. The court seeks to find palliation for the enormities, the unmanly enormities, that have been committed. Striking men where men could not strike back to protect themselves, and where they had no redress or hope of redress; striking with masks on, and therefore striking without any responsibility! Whether these enormities have been committed on men, still more on women, they were wholly unmanly, and let me say utterly un-South Carolinian. Nothing could be so little characteristic of the State; nothing so calculated to bring disgrace upon the State; nothing so calculated to overturn and besmear its ancient, high and bright escutcheon. These stories afflict all men, but they peculiarly afflict him who now addresses you; I would be glad to regard them as exceptional; I must esteem them as in great measure exceptional, and I say to you, young as you are, you have brought reproach upon your State, and you have done wrong to its character. The greatest possible wrong that any son of hers could do, would be to besmear and tarnish her ancient renown and reputation. In passing sentence upon you, we cannot but recollect your youth; we cannot but remember the disordered condition of the times; we cannot but recollect that the moral sense of our people, so recently engaged in war, and especially from the disorderly condition of things may be to some extent blighted; we therefore, feel justified in greatly modifying the sentence which has just been passed upon the prisoner, who has arrived at full manhood. The sentence of the court in your case is that you be fined ten dollars and confined in prison for six months.

## CONFESSION OF ALEXANDER BRIDGES.

I am thirty-seven years old, and have a family of seven children. I have been on two raids. I believe there were two or three people whipped. I did not want to go on the raid. I didn't mean to go, but I happened to meet with them, and so I went; but I didn't do any of the whipping myself.

Q. Was not every man required to do his part? A. Nobody asked me, and I did not do anything. Why didn't I inform the authorities? I was afraid to. I thought they might kill me if I divulged anything. Why didn't I get away? I could not take my family with me; I had to stay.

This man was a shade more ignorant, if that were possible, than the rest of the prisoners. He seemed scarcely able to understand the simplest interrogatories of the Judge.

Judge Bond. The sentence of the court is that you be fined ten dollars and be confined one year.

## CONFESSION OF JOHN BURNETT.

I belong to the Ku Klux organization. I was only on one raid. I was twenty-one years old last April. I can't read or write, but I can just write my name. Do we take any newspaper in our part of the country? I guess not.

Judge Bryan. Are not the people very poor there? A. Yes, sir; very.

Q. Have you had an opportunity of an education? A. No, sir; never had no chance. I haven't got neither father nor mother. The Klan only whipped two negroes while I was in it.

Judge Bond. The sentence of the court is that you be imprisoned six months.

## CONFESSION OF W. P. BURNETT.

I am twenty-seven years old; I can't read or write; there are some schools in our part, but I never had no chance to go; I have only been on one raid; I joined the Ku Klux because they said I would be whipped if I didn't; I was obliged to go in it to save my own self; the two niggers we whipped we gave about thirty apiece [meaning lashes]; pretty nigh everybody in our neighborhood belonged to the organization—I mean the laboring people and both classes.

Q. Did the principal people go on raids? A. No, sir; but they pushed the poor people into it, and made them go; I was induced to join, because they came to my house and told me if I didn't I'd have to pay \$5 and take fifty lashes; it was Henry Cantrell that told me this; I didn't want to go into it, and shouldn't have gone, but all the neighborhood were obliged to go.

Judge Bond. The sentence of the court is, that you be imprisoned six months.

## CONFESSION OF STEPHEN B. SPLAWN.

I suppose I belong to the order, though I was never sworn into it; there were some people of our place down at Limestone, and they brought up word about the organization, and they brought up the oath, or what they called the platform; I told them I did not see anything wrong in it; it seemed to me like a vigilance committee, and they were getting them up in all the different neighborhoods, and I said I thought it would be very well for us to have one to protect our neighborhood, for there were some depredations committed around; I had nothing to do with getting up the organization; there were some eight or ten joined before I knew anything about it. One day they met, and after a good deal of cavilment they settled that I should be their leader; we kept hearing of these offenses that had been committed in York and Union; I attended a meeting of the Klan at Limestone, and I there found out that the Grand Klan had given orders for whipping men; that didn't comply with their notions; when I returned home I had a meeting, and I told them what I had found out, and we just disbanded, and said we would have more to do with it; the object of the Grand Klan was to interfere with voting; I don't know that there was anything said about voting, but that was the way I took it; I never was on any raid, but I just met one; I did not think it was right to do what they were doing, and anything that was contrary to law I was opposed to.

Q. Did you communicate this experience of yours to the authorities when you found out it was an unlawful organization? A. I spoke of it in every community I went into.

Q. Did you tell any justice of the peace of it? A. I did.

Q. What did he say? A. Well, he was in it too. Bank Lyles is the name of the man that presided at Limestone; Sim Moore and Alfred Iatham were two more of the men that were there; Alfred Iatham was one of the owners of the Cherokee Iron Works.

This prisoner seemed to manifest great unwillingness in confessing what he knew, on which Mr. Corbin called Robert Cosh.

Judge Bond. Do you know this man? A. Yes, sir. Q. Are you a member of the Ku Klux Klan? A. Yes, sir.

Q. Are you a member of his Klan? A. Yes, sir. Q. Did his Klan ever go on any raiding? A. Yes, sir; on one.

Q. Did he go with you? A. Yes, sir. Judge Bond. The judgment of the court in your case is that you be fined fifty dollars and imprisoned two years.

## CONFESSION OF MARION GARDINER.

Q. What is your business? A. I belong to the order. Q. What do you do for a living? A. I labor.

Q. What uniform is that you have on? The prisoner wore an old United States infantry coat.

A. I bought it. Q. Were you a soldier? A. No, sir.

I have been on one raid, but nothing was done; they didn't find the man they went for. I can't either read or write.

Mr. Corbin, having been appealed to by the court, confirmed the general statement of the prisoner.

Judge Bond. The sentence of the court is that you be imprisoned three months.

## CONFESSION OF CHESTERFIELD SCRUGGS.

I live in Spartanburg county, and I suppose I am twenty-five years old. It wasn't I, but my cousin, Bob Scruggs, that went on the raid into North Carolina on Mr. Justice. I have been on two raids and whipped two

colored boys. I joined the organization last April. The Chief of our Klan is Joseph Vassey.

Judge Bond. The sentence of the court is that you be imprisoned six months.

#### CONFESSION OF HENRY SURATT.

I joined the Ku Klux because they threatened to whip me if I didn't. I shouldn't have joined hadn't it been to have saved myself; I am about twenty years old; they threatened to whip everybody that didn't join the organization; I was never on nary a raid; I advised them not to go; I wasn't going to join them, but they said I would have to protect myself; they said I couldn't stay there if I didn't join them; that was in March; I have already been in jail about two months.

Mr. Corbin confirmed the statements of the prisoner.

Judge Bond. What are you going to do to protect yourself when you get home? A. I don't know, sir; they have threatened us enough, I know.

Judge Bond. They will be likely to be quiet there in a month; and as you have been confined for two months, the sentence of the court is, that you be imprisoned for one month.

The prisoner. I am quite willing to take that to have quiet there.

#### CONFESSION OF ANDREW CUDD.

I am twenty-two years old; I can't read or write; I have been on two raids; on the raid that I went on, we whipped Jimmie Gaffner and Matt Scruggs; the chief of the Klan was Jonas Vassey; I shouldn't have joined the Klan, but they threatened to whip me, and they abused my folks right smart, and threatened to kill the girl that lived with me; they said if I didn't vote the Democratic ticket they'd give me five hundred lashes; one of my friends advised me to join it, for he said they would be sure to whip me if I didn't; I might have left, but I was so fixed that I could not get away; I had a family, and so had to stay with them.

Q. Are there churches in your neighborhood? A. Yes, sir.

Q. Did all the members of the church belong to the organization? A. Pretty much they did.

Judge Bryan. Did you join in whipping anybody yourself? A. No, sir, indeed I didn't.

I have a wife and three children; pretty much all our Klan are here.

Judge Bond. The sentence of the court in your case is, that you be imprisoned three months.

#### CONFESSION OF MARTIN HAMMETT.

I belonged to the Dopeud Klan, and am about twenty-three years old; I have been on three raids, I believe; the first time we whipped three, the next time one, and the next, two, I believe; the Chief of our Klan was Frank Ray; I had to join the Klan or take a whipping; they called on me before I joined it, and threatened to beat me, and took me out and laid me down, and one of them stuck me one lick; they said they would come back in two weeks; they said I needn't try to get away for they would follow me; I cannot read or write; I am married.

Judge Bond. The sentence of the court is, that you be imprisoned for six months.

#### CONFESSION OF LEWIS HENDERSON.

I live in Spartanburg district; I have only been on one raid, but never whipped a negro in my life; I didn't know any thing about the raid until they were going on it.

[This prisoner was so ignorant that he seemed incapable of understanding the simplest English or of expressing himself with any coherence.]

Judge Bond. The sentence of the court is, that you be imprisoned three months.

#### CONFESSION OF WM. SELF.

The way I came to join the order was that a couple of friends kept at me, wanting me to join, and I kept wizzening them to know something about it, and at last he just up and told me just as it was, and said I would have to join it now, or else they'd whip me or kill me, or I'd have to leave; on these conditions I joined the order; I was only in the order a short time, and then I quit it, and wouldn't have anything at all more to do

with it; I guess I've been on three raids; the first was on Ben Phillips; we struck them three licks apiece.

Q. Were they men or women? A. Well, they was a mixtry; there was two women and one man; the next was on Mr. Roberts, and we went on him; he had a grocery, and had whisky to sell; he was selling whisky on the days of the church; the church was less than half a mile from his house, and there was always a drinking crowd on Saturdays and Sundays, when we went to church; we went to tell him to stop.

Q. Were all your Klan members of the Temperance Society? A. I don't understand.

Question repeated; no answer.

Q. Do you know what a Temperance Society is? A. No, sir.

Q. Were they all opposed to drinking whisky? A. Well, I was myself.

There was nothing said to the niggers we whipped about politics; we next went on a man named Johnnie Green; we didn't do anything to him. [The prisoner showed evident signs of contrition: the first who had manifested any emotion.]

Judge Bryan. Didn't you feel very much ashamed of yourself for acting in this way? A. Well, sir, I know I done wrong.

Q. Didn't you know you were doing wrong at the time? A. Well, sir, I was ordered to do it by the Klan; of course, I didn't feel like it was right.

Q. Were you in disguise? A. We had head disguises on.

Q. Can you read and write? A. I can't read nor write, nary one.

Q. Did you go to church? A. Yes, sir.

Q. Did the preacher ever preach against these whippings? A. No, sir; I never heard him say anything about it being wrong.

Q. Didn't they talk about these things in church? A. No, sir; I never heard anything about what happened.

Judge Bond. They talked about what happened 1800 years ago.

I get my living by farming; I wasn't arrested, but I came here without any warrant at all.

Judge Bryan, in passing sentence, said: We trust you realize how unmanly your conduct has been; you seem to show signs of contrition for your conduct, and as you say you were forced into the matter, the judgment of the court is that you be imprisoned three months, including the imprisonment you have already suffered.

#### CONFESSION OF CHARLES TAITE.

I belonged to the Horse Creek Klan; I've been on five or six raids, as well as I recollect; I was on the raid that went on the McKinney negroes; they didn't whip them, but they took their shot guns; about a week after they were ordered to go back, and then they whipped Reuben McKinney, Wash McKinney and Henry Scruggs; then I was on the John Harris raid, and the Kutherford raid; Jonah Vassey commanded that raid; then I was on the Sam Gaffney raid; that was commanded by a man named Russell; the reason I joined the order was that they told me it was a good thing to be in it, and that if I didn't join I would be very likely to be driven from the country; I can't either read or write.

Mr. Corbin, on being appealed to by the court, said he knew nothing favorable of the prisoner.

Judge Bond. The sentence of the court is that you be imprisoned for eighteen months.

#### CONFESSION OF JUNIUS B. TYNDALL.

I have been on three raids; I was pressed into the order, for they said we had to keep the negroes down; they said they had to keep them from overrunning the white people; then I heard the negroes had drawn guns; it was right smart after that that I went into it; the first raid I went on was for a nigger up at Joe Richards; the nigger never done me no harm as I know on.

Q. Did they whip the negro? A. They made the woman whip the man, and the man whip the woman; the next raid I was on was when they whipped Mat Lockhart; the niggers were going to have a picnic on a widow woman's place, and going to have a frolic and dancing, and they didn't want them to have it, and so they were whipped; I am nineteen years old, but I can't read or write.

Judge Bond. The judgment of the court is that you be imprisoned one year.

#### CONFESSION OF MELVIN C. BLACKWOOD.

I belong to the order, but have only been on one raid; that was on Ben Phillips; I am nineteen years old, but I can't read or write; I get my living by hiring from place to place about. Phillip Rubens was the first man that told me I must join. Frank Ray was the Chief; he swore me in; the reason I didn't know better was, that I had nobody to tell me, and the reason I didn't tell anybody I was in it, was that any one that told anything about it wouldn't have been safe.

Judge Bryan in passing sentence said:

Looking to your extreme youth, and judging by your countenance, and seeing that you have had little connection with these outrages, the sentence of the court is, that you be imprisoned for two months.

#### CONFESSION OF JOHN L. MOORE.

I have been on some four or five raids, I reckon; I was only three months in the order; one of the raids was on Dick Roberts, and another was on the McKinney niggers; one was on Reuben Phillips, and the other was on Alfred Blackwell.

Q. How many people were beaten on the raid? A. I can hardly tell; there was some four or five on the night of the raid on the McKinney niggers; the next time was on Reuben Phillips; there was three whipped that night; the next raid was on Alfred Blackwell; he had it done himself. His wife would not stay at home, and he wanted her to stay at home and cook, while he was making a crop, and he spoke to some of the boys and they raided on them; but they only gave her one or two licks, with a pine bough; I can't read or write a bit; the reason I joined the order, was, I suppose, because I hadn't sense to do any better; nobody that know'd any better didn't tell me.

Judge Bond. The sentence of the court is, that you be imprisoned eighteen months.

#### CONFESSION OF JOHN CANTRELL.

I am nineteen years old some time when this April comes; I can read printing a bit, but I can't write; my father belongs to the Ku Klux; I've been on two raids, one was the Blackwell raid; I didn't see any whipped on the Blackwell raid, but there was one whipped on the other raid; why did I go into this thing? I was just persuaded into it by a man by the name of Gilbert; he is now moved off, and I don't know where he is.

Judge Bond. The sentence of the court is that you be imprisoned for three months.

#### SENTENCE OF JONAS VASSEY.

I belonged to Dan Harris' Klan, and they throwed him over, and I was chief; the Klan went on three raids after I was elected chief; I am twenty-five years old.

Judge Bond. Do you know anything about this man, Mr. Corbin?

Mr. Corbin. There is one thing to be said, perhaps, in his favor, that instead of running away, like the other chiefs, he came in and said he proposed to take the consequences, and he has given much information to the authorities.

Judge Bond. The judgment of the court in your case is that you be imprisoned for one year and fined ten dollars.

#### SENTENCE OF JAMES WALL.

Judge Bryan. What have you done? A. I have been on two raids.

Judge Bond. Who is your chief? A. Aaron Duncan.

Judge Bond. When you saw what this order was why didn't you tell some justice of the peace? A. They said if I did they would kill me; that was the oath.

Judge Bond. Do you ever read the newspapers? A. Yes, sir, sometimes.

Judge Bond. Have you ever been out of the State of South Carolina. A. Yes, sir; I have been to Virginia in the time of the war.

Judge Bond. You ought to have had better sense than this; you can read and write, and read the newspapers, and have been out of the State; that is one advantage you have had; who is going to put in your crops for you this spring? A. I have not got anybody.

Judge Bond. Had these people you whipped

ever done you any harm? A. No, sir; the chief just went on and whipped him because he was telling a lie about the guns; asked him if he had any guns and he said he hadn't.

Judge Bond. What was that your business whether he had a gun or not; hadn't you a gun? A. Yes, sir; I had guns of my own at home.

Judge Bond. Now, you see the condition of the thing is just this: If we punish you, as you ought to be punished, there is nobody to cultivate your place; if we do not, you will go to Ku Kluxing again.

A. No, sir; won't go any more.

Judge Bond. How are you going to help it? The Chief will come around and tell you to go, and you will go.

A. No, sir; I wouldn't go.

Judge Bond. Then he will whip you.

A. Then I will have to take it—but I think Ku Kluxing is done broke up in my county now.

Judge Bond. You didn't help to break it up. I am going to trust you, this time, in order to all to put in your crop next spring; I am going to in you for three months; you ought to go for about ten; I am doing what you didn't do; I am having consideration for your wife and children; but you no consideration for other people's wives and children; but I have the happiness of being from a different State.

Judge Bryan. The court has been very much puzzled to reconcile justice with humanity. It is an extreme exercise of mercy to you, that they announce this judgment.

#### SENTENCE OF JOHN C. WALL.

I have been on three raids; can read and write learned in school in Spartanburg.

Judge Bond. The judgment of the court is, that you be imprisoned three months.

#### CASE OF LEWIS JOLLY.

Mr. Corbin. Do you know anything about the Owen murder? A. No, sir.

Mr. Corbin. Haven't you told people you were there? A. Yes, sir.

Mr. Corbin. Why did you tell it? A. It was done through a joke.

Mr. Corbin. Owen was a Republican, if the court please, in Union county, who was rudely murdered a year ago this fall by the Ku Klux.

Judge Bond. I think this person should be held until the question can be tried. It is a very queer thing to joke about.

#### OTHER SENTENCES.

The following persons were sentenced, as follows:

Frederick Parrie, six months' imprisonment.

Chisenburg Tait, three months' imprisonment.

David C. McClure, three months' imprisonment.

Calvin Cook, three months' imprisonment.

Albert P. Clement, three months' imprisonment and ten dollars fine.

Dillard N. Cantrel, three months' imprisonment.

Zebien Cantrel, one year's imprisonment.

W. S. Blackwell, six months' imprisonment.

Alfred Blackwell, six months' imprisonment.

William F. Ramsey, three months' imprisonment.

William Robbins, six months' imprisonment.

Thomas J. Price, six months' imprisonment.

Taylor Vassey, three months' imprisonment.

King Edwards, six months' imprisonment.

Judgment in the case of Turner Phillips was suspended, because the court regarded it as undeserving of consideration.

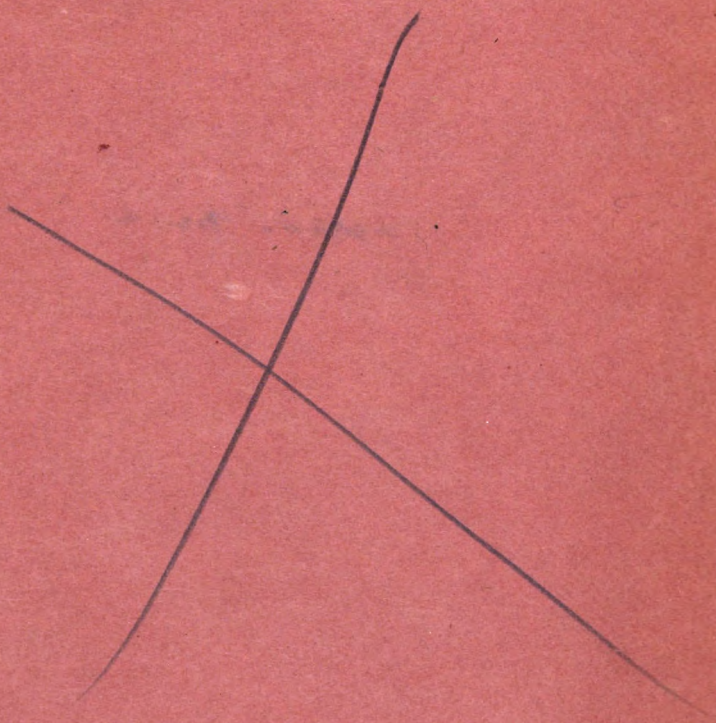
At three o'clock the petit jury was finally discharged, with the thanks of the court.

The grand jury was ordered to meet in the morning, and the court adjourned until Saturday, at 11 o'clock A. M.



NOTE.—The trial was held at the residence  
of the prisoner. The jury was composed of  
sixty persons and the trial lasted for three days.  
Judge Bond presided and the case was decided  
eight—LAWSON.











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